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# ASYLUM AND INSPECTIONS REFORM

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## HEARING

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL LAW,  
IMMIGRATION, AND REFUGEES

OF THE

COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

ON

**H.R. 1153, H.R. 1355, AND H.R. 1679**

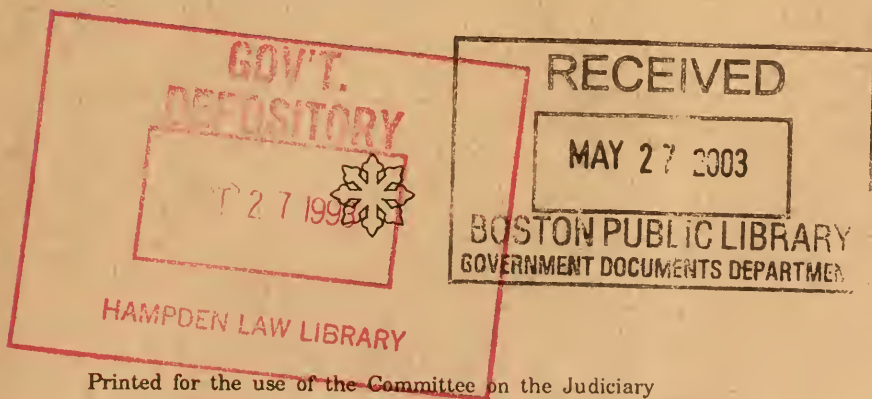
ASYLUM REFORM ACT OF 1993

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APRIL 27, 1993

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**Serial No. 7**



Printed for the use of the Committee on the Judiciary

KF 4806 .A89 1993  
United States. Congress.  
House. Committee on the  
Asylum and inspections  
reform

REFORM  
KF 4806 .A89 1993  
United States. Congress.  
House. Committee on the  
Asylum and inspections

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## ASYLUM AND INSPECTIONS REFORM

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TUESDAY, APRIL 27, 1993

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON INTERNATIONAL LAW,  
IMMIGRATION, AND REFUGEES,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 9:05 a.m., in room B-352, Rayburn House Office Building, Hon. Romano L. Mazzoli (chairman of the subcommittee) presiding.

Present: Representatives Romano L. Mazzoli, Charles E. Schumer, John Bryant, George E. Sangmeister, Jerrold Nadler, Xavier Becerra, Bill McCollum, Elton Gallegly, and Charles T. Canady.

Also present: Kevin Anderson, assistant counsel; Judy Knott, clerk; and Carmel Fisk, minority counsel.

Mr. MAZZOLI. The subcommittee will come to order. We are soon to be graced with the arrival of Congressman Schumer, who is one of the sponsors of one of the main bills before the committee, and one of the bills subject to discussion today. We will try to proceed with reasonable alacrity, but not so quickly that we do not have a chance for Chuck to make his statement.

Let me make a few comments to preface our hearing today, and then I will turn it over to the other members of our subcommittee for statements that they would make.

The asylum system is sick. The asylum system needs attention in the very worst way. One hundred thousand, roughly, new asylum cases are filed each year. Depending on whose view you use, anywhere from 200,000 to perhaps even 300,000 cases are pending at this point, at the end of fiscal 1992.

Facing this torrent, giant cascade of cases, are 150 trained asylum officers. I have not done the mathematics, but I think it could be easily said that if these men and women heard cases steadily through, 24 hours a day, we are probably talking about never, ever diminishing that mountain, and probably not doing so, at least, until the next century.

Thousands upon thousands of persons are entering the United States illegally, without papers, or in some cases, with fraudulent papers. Some enter for the benign purpose of finding a better life, and doing something with their talents. Some enter with nefarious schemes on their minds and terrorist impulses, some of which are given vent.

Some of these people are walking Typhoid Marys—but in this case, it is not typhoid, but HIV, or it is infectious tuberculosis.

These cases are clogging the legal systems, the administration system, costing our taxpayers millions, upon millions of dollars, diverting very scarce Immigration Service, Justice Department, and Treasury Department personnel from service to the public, and from other kinds of activities, in order to try to take care of this tremendous backlog of cases.

Something, as I said, needs to be done. What I hope we can do will have a continuum of the concern, care, compassion, and magnanimity, which has marked most of the activities of our Government toward entering people—sojourners, people seeking relief from persecution. However, that change and those changes should not allow the system to be manipulated, blatantly and easily, frankly, as it is today.

That system is being manipulated. It is being abused. I hate to say it, but it is imminently manipulatable. Just for illustration, there is Mir Aimal Kansi, charged and implicated in the murders of the CIA employees. Then there is Mohammed A. Salameh and Sheik Omar Abdel-Rahman implicated in the World Trade Tower bombings. Also, there are those poor people who are featured in the "60 Minutes" piece of March 14.

Now, what do these people have in common? Well, it is certainly not nationality. There is a Pakistani, a Jordanian, an Egyptian, and a Chinese. It is not age, occupation, or training. What they all have is a talent for manipulating the asylum and the immigration system—a system, as I say, is really an easy target for them to manipulate.

We need to change it. We need to streamline it. We need to protect the rights of the applicants. However, we also need to protect the rights of the U.S. taxpayer, rights of U.S. sovereignty, and rights of U.S. security.

Now, my bill, H.R. 1679, is one of three efforts to do precisely that. Its intent is to streamline the law that currently governs asylum and nonrefoulement, as it is called, and at the same time, do so with justice to the persons involved.

The gentleman to my left, my friend, Mr. McCollum, is the sponsor of a related bill. The gentleman soon to join us, Congressman Schumer, is another who has sponsored a major bill. So at this panel, we have today people who have sponsored several bills, and there are many in Congress who are involved in this effort.

Mr. McCollum's bill basically deals with what happens to people who arrive in this country without the proper documentation and papers. Mr. Schumer's bill primarily deals with trying to preinspect abroad so that people do not come here in the first place who do not have a right to be here.

My bill is to try to change the whole process of determining who is entitled to asylum, in that I would change the timetables to require a 7-day period of time after arriving in the United States in which to give notice of your intent to file, and then 30 days thereafter to actually file the application.

My bill limits appeals, which are now interminable, and they stretch on and on and on, clogging the system, making the system unresponsive, and really making it an easy target for those who wish to manipulate it. I would limit the appeals to basically a few, at different stages of the process.



I would give the asylum-seeker one bite of that asylum apple. Today, asylum-seekers get two full bites, two de novo bites of the asylum apple, one before the asylum officer and then later before an immigration judge at the time of deportation. That is too many. I think one is sufficient.

My bill would also deny benefits to those who fail to show up—the no-shows, with whom the people at JFK and Newark are very familiar. The people who fail to show up would not be entitled to further immigration benefits. I think that the figures show that 40 to 50 percent never show up for the later hearings. Of those who do show up, 30 to 40 percent, are denied. So we have a great body of these people who come in seeking asylum, who do not really wind up achieving that status.

So having said that, I would say that the whole effort of this subcommittee, and I hope of the Congress, is to do the right thing.

It is in the sense of doing something which achieves the goal of simplifying and streamlining the process, while at the same time keeping it imminently fair for those people, many of whom are represented by people in this room today.

Many are, you might say, the progenitors of people on this subcommittee. We need to be sure that our law is done correctly, and that is the whole effort of this subcommittee.

So having said that, I yield to my friend from Florida, Mr. McCollum, who is one of those sponsors.

[The bills, H.R. 1153, H.R. 1355, and H.R. 1679 follow:]

103D CONGRESS  
1ST SESSION

# H. R. 1153

To amend the Immigration and Nationality Act to provide for expanded preinspection at foreign airports, to provide for a permanent visa waiver program, and to expedite airport immigration processing.

---

## IN THE HOUSE OF REPRESENTATIVES

MARCH 1, 1993

Mr. SCHUMER introduced the following bill; which was referred to the  
Committee on the Judiciary

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## A BILL

To amend the Immigration and Nationality Act to provide for expanded preinspection at foreign airports, to provide for a permanent visa waiver program, and to expedite airport immigration processing.

1        *Be it enacted by the Senate and House of Representa-*  
2        *tives of the United States of America in Congress assembled,*

3        **SECTION 1. SHORT TITLE.**

4        This Act may be cited as the "Immigration  
5        Preinspection Act of 1993".



1 **SEC. 2. PREINSPECTION AT FOREIGN AIRPORTS.**

2 (a) IN GENERAL.—The Immigration and Nationality  
3 Act is amended by inserting after section 235 the following  
4 new section:

5 “PREINSPECTION AT FOREIGN AIRPORTS

6 “SEC. 235A. (a) ESTABLISHMENT OF ADDITIONAL  
7 PREINSPECTION STATIONS AT HIGH VOLUME AIR-  
8 PORTS.—Subject to subsection (c), not later than 2 years  
9 after the date of the enactment of this section, the Attor-  
10 ney General, in consultation with the Secretary of State,  
11 shall establish and maintain preinspection stations in at  
12 least 3 of the foreign airports that are among the 10 for-  
13 eign airports which the Attorney General identifies as  
14 serving as last points of departure for the greatest num-  
15 bers of passengers who arrive from abroad by air at ports  
16 of entry within the United States. Such preinspection sta-  
17 tions shall be in addition to any preinspection stations es-  
18 tablished or authorized to be established prior to the date  
19 of the enactment of this section.

20 “(b) ESTABLISHMENT OF ADDITIONAL  
21 PREINSPECTION STATIONS AT CERTAIN FOREIGN AIR-  
22 PORTS FROM WHICH UNDOCUMENTED ALIENS DEPART  
23 FOR THE UNITED STATES.—

24 “(1) REPORTS TO CONGRESS.—Not later than  
25 November 1, 1993, and each subsequent November  
26 1, the Attorney General shall compile and submit to

1 the Committee on the Judiciary of the House of  
2 Representatives and the Committee on the Judiciary  
3 of the Senate a report identifying the foreign air-  
4 ports which served as last points of departure for  
5 aliens who arrived by air at United States ports of  
6 entry without valid documentation during the pre-  
7 ceding fiscal year. Such report shall indicate the  
8 number and nationality of such aliens arriving from  
9 each such foreign airport.

10       “(2) ESTABLISHMENT OF ADDITIONAL  
11 PREINSPECTION STATIONS.—Subject to subsection  
12 (c), not later than November 1, 1995, the Attorney  
13 General, in consultation with the Secretary of State,  
14 shall establish preinspection stations in at least 3 of  
15 the foreign airports that are among the 10 foreign  
16 airports identified in the first report submitted  
17 under paragraph (1) as serving as the last points of  
18 departure for the greatest number of aliens who ar-  
19 rive from abroad by air at points of entry within the  
20 United States without valid documentation. Such  
21 preinspection stations shall be in addition to any  
22 preinspection stations established or authorized to be  
23 established either under subsection (a) or prior to  
24 the date of the enactment of this section.

1           “(3) ESTABLISHMENT OF CARRIER CONSULT-  
2     ANT PROGRAM.—The Attorney General shall assign  
3     additional immigration officers to any foreign air-  
4     port identified in the first report submitted under  
5     paragraph (1) which served as a point of departure  
6     for a significant number of arrivals at United States  
7     ports of entry without valid documentation, but  
8     where no preinspection station is established.

9           “(c) CONDITIONS FOR ESTABLISHMENT OF  
10  PREINSPECTION.—Prior to the establishment of a  
11  preinspection station the Attorney General, in consultation  
12  with the Secretary of State, shall ensure that—

13           “(1) employees of the United States stationed  
14     at the preinspection station and their accompanying  
15     family members will receive appropriate protection,

16           “(2) such employees and their families will not  
17     be subject to unreasonable risks to their welfare and  
18     safety, and

19           “(3) the country in which the preinspection sta-  
20     tion is to be established maintains practices and pro-  
21     cedures with respect to asylum seekers and refugees  
22     in accordance with the Convention Relating to the  
23     Status of Refugees (done at Geneva, July 28, 1951)  
24     or the Protocol Relating to the Status of Refugees  
25     (done at New York, January 31, 1967).”.

1 (b) CLERICAL AMENDMENT.—The table of contents  
2 of such Act is amended by inserting after the item relating  
3 to section 235 the following new item:

“Sec. 235A. Preinspection at foreign airports.”.

4 **SEC. 3. VISA WAIVER PROGRAM.**

5 (a) PERMANENCY OF PROGRAM.—Section 217 of the  
6 Immigration and Nationality Act (8 U.S.C. 1187) is  
7 amended—

8 (1) by amending the section heading to read as  
9 follows:

10 “VISA WAIVER PROGRAM FOR CERTAIN VISITORS”;

11 (2) in the heading of subsection (a), (a)(2), and  
12 (c) by striking “PILOT” and “PILOT” each place ei-  
13 ther appears and inserting “VISA WAIVER” and  
14 “VISA WAIVER”, respectively;

15 (3) by striking “pilot” each place it appears  
16 and inserting “visa waiver”;

17 (4) in subsection (a)(1) by striking “during the  
18 pilot program period (as defined in subsection (e)),”;

19 (5) in subsection (c)(3) by striking “(within the  
20 pilot program period) after the initial period”;

21 (6) in subsection (c) by striking paragraph (4);

22 (7) in subsection (e)(1)(A) by striking  
23 “(a)(1)(A)” and inserting “(a)(1)”; and

24 (8) by striking subsection (f).

1 (b) ELIMINATION OF REQUIREMENT FOR EXECU-  
2 TION OF IMMIGRATION FORMS.—Section 217 of such Act  
3 is further amended—

4 (1) in subsection (a) by striking paragraph (3);

5 (2) in subsection (a) by redesignating para-  
6 graphs (4) through (7) as paragraphs (3) through  
7 (6); and

8 (3) in subsection (e)(1) by striking “subsection  
9 (a)(4)” and inserting “subsection (a)(3)”.

10 (c) EXCLUSION AND DEPORTATION OF APPLICANTS  
11 FOR ADMISSION UNDER VISA WAIVER PROGRAM.—Sec-  
12 tion 217(b) of such Act is amended to read as follows:

13 “(b) EXCLUSION AND DEPORTATION OF APPLICANTS  
14 FOR ADMISSION UNDER VISA WAIVER PROGRAM.—

15 “(1) EXCLUSION.—

16 “(A) An immigration officer’s determina-  
17 tion that an applicant for admission under this  
18 section is not clearly and beyond a doubt enti-  
19 tled to land shall constitute a final order of ex-  
20 clusion and deportation, enforceable pursuant  
21 to section 237. Pending such a determination,  
22 the Attorney General may maintain such appli-  
23 cant in custody.

1           “(B) The procedure described in section  
2           236 shall not apply to an order issued under  
3           this paragraph.

4           “(2) DEPORTATION.—

5           “(A) Notwithstanding any other provision  
6           of law, an alien admitted to the United States  
7           under this section who is determined, pursuant  
8           to such regulations as the Attorney General  
9           shall prescribe, to be subject to deportation  
10          shall be deported pursuant to section 243. An  
11          immigration officer’s determination under this  
12          subsection shall constitute a final order of de-  
13          portation. Pending such determination, the At-  
14          torney General may maintain such alien in cus-  
15          tody.

16          “(B) The procedure described in section  
17          242 shall not apply to an order issued under  
18          this paragraph.

19          “(3) REVIEW.—Notwithstanding any other pro-  
20          vision of law or the failure of a carrier to provide the  
21          notice described in subsection (e)(1)(D), an alien  
22          who applies for admission to the United States  
23          under this section shall not be entitled—

24                 “(A) to review or appeal under this Act of  
25                 an immigration officer’s determination as to the



1           admissibility of the alien at the port of entry  
2           into the United States, or

3           “(B) subject to paragraph (4), to contest  
4           an immigration officer’s determination under  
5           paragraph (2).

6           “(4) ASYLUM.—The Attorney General shall es-  
7           tablish a procedure for an alien who is applying for  
8           admission under this section or who has been admit-  
9           ted under this section to apply for asylum under sec-  
10          tion 208.

11          “(5) TREATMENT OF NATIONALS OF VISA  
12          WAIVER COUNTRIES.—An alien who—

13               “(A) is a national of a visa waiver program  
14               country or claims to be a national of a visa  
15               waiver country, and

16               “(B) is not in possession of a valid visa,  
17               shall be considered to be an applicant for ad-  
18               mission under this section.”.

19          (d) CARRIER AGREEMENTS.—Section 217(e)(1) of  
20          such Act is amended—

21               (1) in subparagraph (B) by striking “and”;

22               (2) in subparagraph (C) by striking the period  
23               at the end and inserting “; and”; and

24               (3) by inserting after subparagraph (C) the fol-  
25               lowing new subparagraph:

1           “(D) to provide passengers applying for  
2 admission to the United States under this sec-  
3 tion with written notification that they are not  
4 entitled (i) to any appeal or review of an immi-  
5 gration officer’s determination of admissibility,  
6 or (ii) to contest any action for deportation.”.

7       (e) CLERICAL AMENDMENT.—The item in the table  
8 of contents of such Act relating to section 217 is amended  
9 to read as follows:

“Sec. 217. Visa waiver program for certain visitors.”.

10 **SEC. 4. EXPEDITING AIRPORT IMMIGRATION PROCESSING.**

11       (a) PASSENGER MANIFESTS.—

12           (1) ELECTRONIC PASSENGER MANIFESTS.—Sec-  
13 tion 231(a) of the Immigration and Nationality Act  
14 (8 U.S.C. 1221(a)) is amended in the first sentence  
15 by striking “typewritten” and inserting “electronic,  
16 typewritten,”.

17           (2) INFORMATION CONTAINED IN PASSENGER  
18 MANIFEST.—Section 231(a) of such Act (8 U.S.C.  
19 1221(a)) is further amended by inserting imme-  
20 diately before the period at the end of the second  
21 sentence “, except that regulations concerning the  
22 information contained in such lists may not require  
23 information other than the full name, date of birth,  
24 passport number, and citizenship of the person

1 transported, and information identifying the flight  
2 on which the person was transported”.

3 (b) INSPECTION BY IMMIGRATION OFFICERS.—Sec-  
4 tion 235(a) of the Immigration and Nationality Act (8  
5 U.S.C. 1225(a)) is amended by adding after the second  
6 sentence the following: “Except as the Attorney General  
7 may provide, nothing in this section shall be construed as  
8 requiring a personal interview in the conduct of an exam-  
9 ination or inspection.”.

10 (c) PROVISION OF IMMIGRATION INSPECTION AND  
11 PREINSPECTION SERVICES.—

12 (1) IN GENERAL.—Section 286 of the Immigra-  
13 tion and Nationality Act (8 U.S.C. 1356) is  
14 amended—

15 (A) in subsection (g) by striking “forty-  
16 five” and inserting “thirty”; and

17 (B) in subsection (l)—

18 (i) by striking “forty-five” and insert-  
19 ing “thirty”; and

20 (ii) by striking “March 31st” and in-  
21 serting “January 31st”.

22 (2) EFFECTIVE DATE.—The amendments made  
23 by paragraph (1) shall apply to passengers arriving  
24 on or after 60 days after the date of the enactment  
25 of this Act.

1 (d) EXPEDITED PROCESS FOR THE INSPECTION OF  
2 CITIZENS.—

3 (1) IN GENERAL.—Section 235A of the Immi-  
4 gration and Nationality Act, as inserted by section  
5 1(a) of this Act, is amended—

6 (A) in the heading, by adding at the end  
7 the following: “; EXPEDITED PROCESS FOR THE  
8 INSPECTION OF CITIZENS”, AND

9 (B) by adding at the end the following new  
10 subsection:

11 “(d) EXPEDITED PROCESS FOR THE IN-  
12 SPECTION OF CITIZENS.—Not later than 90  
13 days after the date of the enactment of this sec-  
14 tion, the Attorney General shall implement an  
15 expedited process for the inspection of United  
16 States citizens upon arrival from abroad by air  
17 at ports of entry within the United States. An  
18 expedited process shall be maintained except  
19 during a national or airport specific security  
20 emergency as determined by the Attorney Gen-  
21 eral.”.

22 (2) CLERICAL AMENDMENT.—The item in the  
23 table of contents of such Act relating to section  
24 235A, as inserted by section 1(b) of this Act, is  
25 amended to read as follows:

"Sec. 235A. Preinspection at foreign airports; expedited process for the inspection of citizens."

○

103D CONGRESS  
1ST SESSION

# H. R. 1355

To amend the Immigration and Nationality Act with respect to exclusion for admissions fraud, procedures for inspecting aliens seeking entry to the United States, and increasing penalties for certain alien smuggling.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 16, 1993

Mr. MCCOLLUM (for himself, Mr. SMITH of Texas, Mr. CANADY, Mr. BEREUTER, Mr. COMBEST, Mr. CUNNINGHAM, Mr. ARCHER, Mr. GALLEGLY, and Mr. RIDGE) introduced the following bill; which was referred to the Committee on the Judiciary

---

## A BILL

To amend the Immigration and Nationality Act with respect to exclusion for admissions fraud, procedures for inspecting aliens seeking entry to the United States, and increasing penalties for certain alien smuggling.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the "Exclusion and Asylum  
5       Reform Amendments of 1993".



1 **SEC. 2. ADMISSIONS FRAUD.**

2 (a) EXCLUSION FOR FRAUDULENT DOCUMENTS AND  
3 FAILURE TO PRESENT DOCUMENTS.—Section  
4 212(a)(6)(C) of the Immigration and Nationality Act (8  
5 U.S.C. 1182(a)(6)(C)) is amended—

6 (1) by striking “(C) MISREPRESENTATION” and  
7 inserting in lieu thereof the following:

8 “(C) FRAUD, MISREPRESENTATION, AND  
9 FAILURE TO PRESENT DOCUMENTS”;

10 (2) by adding at the end the following new  
11 clause:

12 “(iii) FRAUDULENT DOCUMENTS AND  
13 FAILURE TO PRESENT DOCUMENTS.—

14 “(I) Any alien who, in seeking  
15 entry to the United States or board-  
16 ing a common carrier for the purpose  
17 of coming to the United States, pre-  
18 sents any document which, in the de-  
19 termination of the immigration offi-  
20 cer, is forged, counterfeit, altered,  
21 falsely made, stolen, or inapplicable to  
22 the alien presenting the document, or  
23 otherwise contains a misrepresenta-  
24 tion of a material fact, is excludable.

25 “(II) Any alien who, in boarding  
26 a common carrier for the purpose of

1 coming to the United States, presents  
2 a document that relates or purports to  
3 relate to the alien's eligibility to enter  
4 the United States, and fails to present  
5 such document to an immigration offi-  
6 cer upon arrival at a port of entry  
7 into the United States, is exclud-  
8 able.”.

9 (b) AVAILABILITY OF ASYLUM AND OTHER DISCRE-  
10 TIONARY RELIEF.—

11 (1) Section 208 of the Immigration and Nation-  
12 ality Act (8 U.S.C. 1158) is amended by adding at  
13 the end the following new subsection:

14 “(e)(1) APPLICATION OF FRAUD EXCLUSION.—Not-  
15 withstanding subsection (a) and except as provided in  
16 paragraph (2), any alien who is excludable under section  
17 212(a)(6)(C)(iii) or section 212(a)(7)(A)(i) may not apply  
18 for or be granted asylum.

19 “(2) EXCEPTION.—The limitation under paragraph  
20 (1) shall not apply if the action upon which the exclusion  
21 is based was pursuant to direct departure from a country  
22 in which (A) the alien has a credible fear of persecution,  
23 or (B) there is a significant danger that the alien would  
24 be returned to a country in which the alien would have  
25 a credible fear of persecution.

1       “(3) DEFINITION.—As used in this subsection, the  
2 term ‘credible fear of persecution’ means (A) that it is  
3 more probable than not that the statements made by the  
4 alien in support of his or her claim are true, and (B) that  
5 there is a significant possibility, in light of such state-  
6 ments and of such other facts as are known to the officer  
7 about country conditions, that the alien could establish eli-  
8 gibility as a refugee within the meaning of section  
9 101(a)(42)(A).”.

10       (2) Section 212(c) of the Immigration and Na-  
11 tionality Act (8 U.S.C. 1182(c)) is amended in the  
12 third sentence by inserting before the period “or to  
13 any alien who is excludable pursuant to section  
14 212(a)(6)(C)(iii)”.

15 **SEC. 3. INSPECTION AND EXCLUSION BY IMMIGRATION OF-**  
16 **FICERS.**

17       Section 235(b) of the Immigration and Nationality  
18 Act (8 U.S.C. 1225(b)) is amended to read as follows:

19       “(b) INSPECTION AND EXCLUSION BY IMMIGRATION  
20 OFFICERS.—

21       “(1) An immigration officer shall inspect each  
22 alien who is seeking entry to the United States.

23       “(2)(A) If the examining immigration officer  
24 determines that an alien seeking entry—

1                   “(i)(I) is excludable under section  
2                   212(a)(6)(C)(iii), or

3                   “(II) is excludable under section  
4                   212(a)(7)(A)(i),

5                   “(ii) does not have any reasonable basis for  
6                   legal entry into the United States, and

7                   “(iii) does not indicate an intention to  
8                   apply for asylum under section 208,  
9                   the alien shall be specially excluded from entry into  
10                  the United States without a hearing.

11                  “(B) The examining immigration officer shall  
12                  refer to an immigration officer, specially trained to  
13                  conduct interviews and make determinations bearing  
14                  on eligibility for asylum, any alien who is (i) exclud-  
15                  able under section 212(a)(6)(C)(iii) or section  
16                  212(a)(7)(A) (i) and (ii) who has indicated an inten-  
17                  tion to apply for asylum. Such an alien shall not be  
18                  considered to have entered the United States for  
19                  purposes of this Act.

20                  “(C) An alien under subparagraph (B) who is  
21                  determined by an immigration officer, specially  
22                  trained to conduct interviews and make determina-  
23                  tions bearing on eligibility for asylum, to be exclud-  
24                  able and ineligible for the exception under section

1       208(e)(2), shall be specially excluded and deported  
2       from the United States without further hearing.

3               “(3)(A) Except as provided in subparagraph  
4       (B), if the examining immigration officer determines  
5       that an alien seeking entry is not clearly and beyond  
6       a doubt entitled to enter, the alien shall be detained  
7       for a hearing before an immigration judge.

8               “(B) The provisions of subparagraph (A) shall  
9       not apply—

10              “(i) to an alien crewman,

11              “(ii) to an alien described in paragraph  
12       (2)(A) or (2)(C), or

13              “(iii) if the conditions described in section  
14       273(d) exist.

15              “(4) The decision of the examining immigration  
16       officer, if favorable to the admission of any alien,  
17       shall be subject to challenge by any other immigra-  
18       tion officer and such challenge shall operate to take  
19       the alien, whose privilege to enter is so challenged,  
20       before an immigration judge for a hearing on exclu-  
21       sion of the alien.

22              “(5) The Attorney General shall establish pro-  
23       cedures that ensure that aliens are not specially ex-  
24       cluded under paragraph (2)(A) without an inquiry

1 into their reasons for seeking entry into the United  
2 States.

3 “(6)(A) Subject to subparagraph (B), an alien  
4 has not entered the United States for purposes of  
5 this Act unless and until such alien has been in-  
6 spected and admitted by an immigration officer pur-  
7 suant to this subsection.

8 “(B) An alien who (i) is physically present in  
9 the United States, (ii) has been physically present in  
10 the United States for a continuous period of one  
11 year, and (iii) has not been inspected and admitted  
12 by an immigration officer may be said to have en-  
13 tered the United States without inspection. Such an  
14 alien is subject to deportation pursuant to section  
15 241(a)(1)(B).”.

16 **SEC. 4. JUDICIAL REVIEW.**

17 Section 235 of the Immigration and Nationality Act  
18 (8 U.S.C. 1225) (as amended by section 3) is amended  
19 by adding after subsection (c) the following new sub-  
20 sections:

21 “(d) **HABEAS CORPUS REVIEW.**—Notwithstanding  
22 any other provision of law, no court shall have jurisdiction  
23 to review, except by petition for habeas corpus, any deter-  
24 mination made with respect to an alien found excludable  
25 pursuant to section 212(a)(6)(C)(iii) or section



1 212(a)(7)(A)(i). In any such case, review by habeas corpus  
2 shall be limited to examination of whether the petitioner  
3 (1) is an alien, and (2) was ordered excluded from the  
4 United States pursuant to section 235(b)(2).

5 “(e) OTHER LIMITS ON JUDICIAL REVIEW AND AC-  
6 TION.—Notwithstanding any other provision of law, no  
7 court shall have jurisdiction (1) to review the procedures  
8 established by the Attorney General for the determination  
9 of exclusion pursuant to section 212(a)(6)(C)(iii) or sec-  
10 tion 212(a)(7)(A)(i), or (2) to enter declaratory or injunc-  
11 tive relief with respect to the implementation of subsection  
12 (b)(2). Regardless of the nature of the suit or claim, no  
13 court shall have jurisdiction except by habeas corpus peti-  
14 tion as provided in subsection (d) to consider the validity  
15 of any adjudication or determination of special exclusion  
16 or to provide declaratory or injunctive relief with respect  
17 to the special exclusion of any alien.

18 “(f) COLLATERAL ENFORCEMENT PROCEEDINGS.—  
19 In any action brought for the assessment of penalties for  
20 improper entry or re-entry of an alien under section 275  
21 or 276, no court shall have jurisdiction to hear claims col-  
22 laterally attacking the validity of orders of exclusion, spe-  
23 cial exclusion, or deportation entered under sections 235,  
24 236, and 242.”.

1   **SEC. 5. CONFORMING AMENDMENTS.**

2       Section 237(a) of the Immigration and Nationality  
3   Act (8 U.S.C. 1227(a)) is amended—

4           (1) in the second sentence of paragraph (1) by  
5       striking out “Deportation” and inserting in lieu  
6       thereof “Subject to section 235(b)(2), deportation”;  
7       and

8           (2) in the first sentence of paragraph (2) by  
9       striking out “If” and inserting in lieu thereof “Sub-  
10   ject to section 235(b)(2), if”.

11   **SEC. 6. ENHANCED PENALTIES FOR CERTAIN ALIEN SMUG-**  
12                   **GLING.**

13       Section 274(a)(1) of the Immigration and Nationality  
14   Act (8 U.S.C. 1324(a)(1)) is amended by striking “five  
15   years” and inserting “ten years”.

16   **SEC. 7. EFFECTIVE DATE.**

17       Except as otherwise provided, the amendments made  
18   by this Act shall take effect on the date of the enactment  
19   of this Act and shall apply to aliens who arrive in or seek  
20   admission to the United States on or after such date.

○

103D CONGRESS  
1ST SESSION

# H. R. 1679

To amend the Immigration and Nationality Act with respect to  
nonrefoulement and asylum.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 2, 1993

Mr. MAZZOLI introduced the following bill; which was referred to the  
Committee on the Judiciary

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## A BILL

To amend the Immigration and Nationality Act with respect  
to nonrefoulement and asylum.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the "Asylum Reform Act  
5 of 1993".

6       **SEC. 2. NONREFOULEMENT AND ASYLUM.**

7       (a) IN GENERAL.—Section 208 of the Immigration  
8 and Nationality Act is amended to read as follows:

9       ~~"SEC. 208. NONREFOULEMENT AND ASYLUM.~~

10       "(a) NONREFOULEMENT.—

## 2

1           “(1) RIGHT TO APPLY.—An alien physically  
2 present in the United States or at a land border or  
3 port of entry, irrespective of such alien’s status, may  
4 apply for nonrefoulement in accordance with this  
5 section.

6           “(2) CONDITIONS FOR GRANTING.—

7           “(A) IN GENERAL.—The Attorney General  
8 shall grant nonrefoulement to an alien if the  
9 alien applies for nonrefoulement in accordance  
10 with the requirements of this section and estab-  
11 lishes that it is more likely than not that in the  
12 country of nationality (or, in the case of a per-  
13 son having no nationality, the country in which  
14 such alien last habitually resided) such alien’s  
15 life or freedom would be threatened on account  
16 of race, religion, nationality, membership in a  
17 particular social group, or political opinion.

18           “(B) EXCEPTION.—Subparagraph (A)  
19 shall not apply to an alien if the Attorney Gen-  
20 eral determines that—

21           “(i) the alien ordered, incited, as-  
22 sisted, or otherwise participated in the per-  
23 secution of any person on account of race,  
24 religion, nationality, membership in a par-  
25 ticular social group, or political opinion;

## 3

1                   “(ii) the alien, having been convicted  
2                   by a final judgment of a particularly seri-  
3                   ous crime, constitutes a danger to the com-  
4                   munity of the United States;

5                   “(iii) there are serious reasons for be-  
6                   lieving that the alien has committed a seri-  
7                   ous nonpolitical crime outside the United  
8                   States prior to the arrival of the alien in  
9                   the United States;

10                  “(iv) there are reasonable grounds for  
11                  regarding the alien as a danger to the se-  
12                  curity of the United States; or

13                  “(v) a country willing to accept the  
14                  alien has been identified (other than the  
15                  country described in subparagraph (A)) to  
16                  which the alien can be deported or re-  
17                  turned and the alien does not establish  
18                  that it is more likely than not that the  
19                  alien's life or freedom would be threatened  
20                  in such country on account of race, reli-  
21                  gion, nationality, membership in a particu-  
22                  lar social group, or political opinion.

23                  For purposes of clause (ii), an alien who has been  
24                  convicted of an aggravated felony shall be considered  
25                  to have committed a particularly serious crime.

1           “(3) NONREFOULEMENT STATUS.—In the case  
2       of any alien granted nonrefoulement under para-  
3       graph (2), the Attorney General, in accordance with  
4       this section—

5           “(A) shall not deport or return the alien to  
6       the country described under paragraph (2)(A);

7           “(B) shall authorize the alien to engage in  
8       employment in the United States and provide  
9       the alien with an ‘employment authorized’ en-  
10      dorsement or other appropriate work permit;  
11      and

12          “(C) may allow the alien to travel abroad  
13      with the prior consent of the Attorney General.

14          “(4) TERMINATION.—Nonrefoulement status  
15      granted under paragraph (2) may be terminated if  
16      the Attorney General, pursuant to such regulations  
17      as the Attorney General may prescribe, determines  
18      that—

19          “(A) the alien no longer meets the condi-  
20      tions described in paragraph (2)(A) owing to a  
21      change in circumstances in the alien’s country  
22      of nationality or, in the case of an alien having  
23      no nationality, in the country in which the alien  
24      last habitually resided;

1           “(B) the alien meets a condition described  
2           in paragraph (2)(B); or

3           “(C) a country willing to accept the alien  
4           has been identified (other than the country de-  
5           scribed in paragraph (2)(A)) to which the alien  
6           can be deported or returned and the alien can-  
7           not establish that it is more likely than not that  
8           the alien’s life or freedom would be threatened  
9           in such country on account of race, religion, na-  
10          tionality, membership in a particular social  
11          group, or political opinion.

12          “(5) ACCEPTANCE BY ANOTHER COUNTRY.—In  
13          the case of an alien described in paragraph (2)(B)(v)  
14          or paragraph (4)(C), the alien’s deportation or re-  
15          turn shall be directed by the Attorney General in the  
16          sole discretion of the Attorney General, to any coun-  
17          try which is willing to accept the alien into its terri-  
18          tory (other than the country described in paragraph  
19          (2)(A)).”.

20          “(b) NONREFOULEMENT PROCEDURE.—

21                 “(1) APPLICATIONS.—

22                         “(A) IN GENERAL.—

23                                 “(i) DEADLINE.—Subject to clause  
24                                 (ii), an alien’s application for



1 nonrefoulement shall not be considered  
2 under this section unless—

3 “(I) the alien has filed, not later  
4 than 7 days after entering or coming  
5 to the United States, notice of inten-  
6 tion to file such an application, and

7 “(II) such application is actually  
8 filed not later than 30 days after the  
9 date of filing such notice of intention.

10 “(ii) EXCEPTION.—An application for  
11 nonrefoulement may be considered, not-  
12 withstanding that the requirements of  
13 clause (i) have not been met, only if the  
14 alien demonstrates by clear and convincing  
15 evidence changed circumstances in the  
16 alien’s country of nationality (or in the  
17 case of an alien with no nationality, in the  
18 country where the alien last habitually re-  
19 sided) affecting eligibility for  
20 nonrefoulement.

21 “(B) REQUIREMENTS.—An application for  
22 nonrefoulement shall not be considered unless  
23 the alien submits to the taking of fingerprints  
24 and a photograph in a manner determined by  
25 the Attorney General.

1           “(C) FEES.—The Attorney General may  
2           provide for a reasonable fee for the consider-  
3           ation of an application for nonrefoulement or  
4           for any proceeding or filing connected there-  
5           with.

6           “(D) PRIVILEGE OF COUNSEL.—

7           “(i) NOTICE.—At the time of filing a  
8           notice of intention to apply for  
9           nonrefoulement, the alien shall be advised  
10          of the privilege of being represented (at no  
11          expense to the government) by such coun-  
12          sel, authorized to practice in such proceed-  
13          ings, as the alien shall choose.

14          “(ii) PROVISION OF LIST OF COUN-  
15          SEL.—The Attorney General shall provide  
16          for lists (updated not less often than quar-  
17          terly) of persons who have indicated their  
18          availability to represent pro bono aliens in  
19          nonrefoulement proceedings. Such lists  
20          shall be provided to the alien at the time  
21          of filing of notice of intention to apply for  
22          nonrefoulement, and otherwise be made  
23          generally available.

24          “(2) CONSIDERATION OF APPLICATIONS; HEAR-  
25          INGS.—

1           “(A) NONREFOULEMENT OFFICERS.—Ap-  
2           plications for nonrefoulement shall be consid-  
3           ered by officers of the Service (referred to in  
4           this Act as ‘nonrefoulement officers’) who are  
5           specially designated by the Service as having  
6           special training and knowledge of international  
7           conditions and human rights records of foreign  
8           countries.

9           “(B) SCHEDULING OF HEARINGS.—

10           “(i) IN GENERAL.—Upon the filing of  
11           an application for nonrefoulement, a  
12           nonrefoulement officer, at the earliest  
13           practicable time and after consultation  
14           with the attorney for the Government and  
15           the attorney (if any) for the applicant,  
16           shall set the application for hearing on a  
17           day certain or list it on a weekly or other  
18           short-term calendar, so as to assure a  
19           speedy hearing.

20           “(ii) DEADLINE.—Unless the appli-  
21           cant (or an attorney for the applicant) con-  
22           sents in writing to the contrary, the hear-  
23           ing on the nonrefoulement application shall  
24           commence not later than 45 days after the  
25           date the application was filed.

1           “(C) PUBLIC HEARINGS.—A hearing on a  
2           nonrefoulement application shall be open to the  
3           public unless the applicant requests that it be  
4           closed to the public.

5           “(D) RIGHTS IN HEARINGS.—During such  
6           hearing, the applicant shall have the privilege of  
7           the assistance and participation of counsel (as  
8           provided under paragraph (1)(D)) and shall be  
9           entitled to present evidence and witnesses, to  
10          examine and object to evidence presented by the  
11          Government, and to cross-examine all witnesses  
12          presented by the Government.

13          “(E) TRANSCRIPT OF HEARINGS.—A com-  
14          plete record of the proceedings and of all testi-  
15          mony and evidence produced at the hearing  
16          shall be kept. The hearing shall be recorded  
17          verbatim. The Attorney General and the Service  
18          shall provide that a transcript of a hearing held  
19          under this section is made available not later  
20          than 10 days after the date of completion of the  
21          hearing.

22          “(F) DEADLINE FOR DETERMINATIONS ON  
23          APPLICATIONS.—The officer shall render a de-  
24          termination on the application not later than 30  
25          days after the date of completion of the hear-

1 ing. The determination of the officer shall be  
2 based only on the evidence produced at the  
3 hearing.

4 “(G) RESOURCE ALLOCATION.—The Attor-  
5 ney General shall allocate sufficient resources  
6 so as to assure that applications for  
7 nonrefoulement are heard and determined on a  
8 timely basis.

9 “(H) SANCTIONS FOR FAILURE TO AP-  
10 PEAR.—

11 “(i) Subject to clause (ii), the applica-  
12 tion for nonrefoulement of an alien who  
13 does not appear for a hearing on such ap-  
14 plication shall be summarily dismissed un-  
15 less the alien can show exceptional cir-  
16 cumstances (as defined in section  
17 242B(f)(2)) as determined by the  
18 nonrefoulement officer.

19 “(ii) Clause (i) shall not apply if writ-  
20 ten and oral notice were not provided as  
21 required by section 242B(e)(4)(B).

22 “(I) FINALITY OF DETERMINATIONS.—

23 “(i) IN GENERAL.—The decision of  
24 the nonrefoulement officer shall be the

1 final administrative determination of a  
2 claim for nonrefoulement.

3 “(ii) TREATMENT OF CASES IN EX-  
4 CLUSION OR DEPORTATION.—If proceed-  
5 ings are instituted against an alien under  
6 section 235 or 242 of this Act and the  
7 alien files an application for  
8 nonrefoulement based on circumstances de-  
9 scribed in subsection (b)(1)(A)(ii), the  
10 nonrefoulement officer shall render, on an  
11 expedited basis, a decision on the applica-  
12 tion. The decision of the nonrefoulement  
13 officer shall be the final administrative de-  
14 termination of a claim for nonrefoulement.

15 “(3) TREATMENT OF CLASSES OF ALIENS.—

16 “(A) DESIGNATION.—In the sole discretion  
17 of the Attorney General, the Attorney General  
18 may designate—

19 “(i) any class of aliens who are na-  
20 tionals or residents of a foreign state for  
21 which the Attorney General determines  
22 that a high percentage of that class of  
23 aliens have been granted nonrefoulement  
24 under subsection (a)(2)(A) in the 6-month



1 period prior to the designation of such  
2 class; or

3 “(ii) any class of aliens who are na-  
4 tionals or residents of a foreign state for  
5 which the Attorney General determines  
6 that a high percentage of that class of na-  
7 tionals or residents would be granted  
8 nonrefoulement status under subsection  
9 (a)(2)(A) in the 6-month period after des-  
10 ignation.

11 “(B) ALIENS IN DESIGNATED CLASSES.—

12 An alien who is within one of the designated  
13 classes under subparagraph (A) shall be pre-  
14 sumed to have fulfilled the requirement under  
15 subsection (a)(2)(A) of establishing that such  
16 alien’s life or freedom would be threatened on  
17 account of race, religion, nationality, member-  
18 ship in a particular social group, or political  
19 opinion.

20 “(C) PERIODIC REVIEW.—The Attorney  
21 General shall periodically review the status of  
22 any class of aliens designated under subpara-  
23 graph (A) to determine whether conditions con-  
24 tinue to warrant such designation. The Attor-  
25 ney General shall have the authority to termi-

1           nate, without notice or review, any designation  
2           under subparagraph (A).

3           “(c) ASYLUM.—

4           “(1) ADJUSTMENT OF STATUS.—Under such  
5           regulations as the Attorney General may prescribe,  
6           the Attorney General shall adjust to the status of an  
7           alien granted asylum the status of any alien granted  
8           nonrefoulement under subsection (a)(2)(A) who—

9                   “(A) applies for such adjustment;

10                   “(B) has been physically present in the  
11           United States for at least 1 year after being  
12           granted nonrefoulement;

13                   “(C) continues to be eligible for  
14           nonrefoulement under this section;

15                   “(D) is not firmly resettled in any foreign  
16           country; and

17                   “(E) is admissible under this Act at the  
18           time of examination for adjustment of status  
19           under this subsection.

20           “(2) TREATMENT OF SPOUSE AND CHILD-  
21           DREN.—A spouse or child (as defined in section  
22           101(b)(A), (B), (C), (D), or (E)) of an alien whose  
23           status is adjusted to that of an alien granted asylum  
24           under paragraph (a)(2) may be granted the same

1 status as the alien if accompanying, or following to  
2 join, such alien.

3 “(3) APPLICATION FEES.—The Attorney Gen-  
4 eral may impose a reasonable fee for the filing of an  
5 application for adjustment of status under this sub-  
6 section.”.

7 (b) CLERICAL AMENDMENT.—The item in the table  
8 of contents of such Act relating to section 208 is amended  
9 to read as follows:

“Sec. 208. Nonrefoulement and asylum.”.

10 **SEC. 3. FAILURE TO APPEAR FOR NONREFOULEMENT**  
11 **HEARING; JUDICIAL REVIEW.**

12 (a) FAILURE TO APPEAR FOR NONREFOULEMENT  
13 HEARING.—Section 242B(e)(4) of the Immigration and  
14 Nationality Act (8 U.S.C. 1252b(e)(4)) is amended—

15 (1) in the heading, by striking “ASYLUM” and  
16 inserting “NONREFOULEMENT”;

17 (2) by striking “asylum” each place it appears  
18 and inserting “nonrefoulement”; and

19 (3) in subparagraph (A), by striking all after  
20 clause (iii) and inserting “shall not be eligible for  
21 any benefits under this Act.”.

22 (b) JUDICIAL REVIEW.—Section 106 of such Act (8  
23 U.S.C. 1105a) is amended by adding at the end the follow-  
24 ing subsection:

1       “(d) The procedure prescribed by, and all the provi-  
2 sions of chapter 158 of title 28, United States Code, shall  
3 apply to, and shall be the sole and exclusive procedure for,  
4 the judicial review of all final orders granting or denying  
5 nonrefoulement, except that—

6               “(1) a petition for review may be filed not later  
7 than 90 days after the date of the issuance of the  
8 final order granting or denying nonrefoulement;

9               “(2) the venue of any petition for review under  
10 this subsection shall be in the judicial circuit in  
11 which the administrative proceedings before a  
12 nonrefoulement officer were conducted in whole or in  
13 part, or in the judicial circuit wherein is the resi-  
14 dence, as defined in this Act, of the petitioner, but  
15 not in more than one circuit; and

16               “(3) notwithstanding any other provision of  
17 law, a determination granting or denying  
18 nonrefoulement based on changed circumstances  
19 pursuant to section 208(b)(1)(A)(ii) shall be in the  
20 sole discretion of the Attorney General.”.

21 **SEC. 4. CONFORMING AMENDMENTS.**

22       (a) **LIMITATION ON DEPORTATION.**—Section 243 of  
23 the Immigration and Nationality Act (8 U.S.C. 1253) is  
24 amended by striking subsection (h).

1 (b) ADJUSTMENT OF STATUS.—Section 209(b) of  
2 such Act (8 U.S.C. 1159(b)) is amended—

3 (1) in paragraph (2) by striking “one year” and  
4 inserting “2 years”; and

5 (2) by amending paragraph (3) to read as  
6 follows:

7 “(3) continues to be eligible for nonrefoulement  
8 under section 208,”.

9 (c) ALIENS INELIGIBLE FOR TEMPORARY PRO-  
10 TECTED STATUS.—Section 244A(c)(2)(B)(ii) of the Immi-  
11 gration and Nationality Act (8 U.S.C. 1254a(c)(2)(B)(ii))  
12 is amended by striking “section 243(h)(2)” and inserting  
13 “clauses (i), (ii), (iii), or (iv) of section 208(a)(2)(B)”.

14 (d) ELIGIBILITY FOR NATURALIZATION.—Section  
15 316(f)(1) of the Immigration and Nationality Act (8  
16 U.S.C. 1427(f)(1)) is amended by striking “subpara-  
17 graphs (A) through (D) of paragraph 243(h)(2)” and in-  
18 serting “clauses (i), (ii), (iii), or (iv) of section  
19 208(a)(2)(B).”.

20 (e) FAMILY UNITY.—Section 301(e) of the Immigra-  
21 tion Act of 1990 (P.L. 101-649) is amended by striking  
22 “section 243(h)(2)” and inserting “clauses (i), (ii), (iii),  
23 or (iv) of section 208(a)(2)(B).”.

1 **SEC. 5. EFFECTIVE DATES.**

2 (a) **IN GENERAL.**—Except as otherwise provided, the  
3 amendments made by this Act shall take effect on the date  
4 of the enactment of this Act.

5 (b) **EXCEPTIONS.**—

6 (1) The amendments made by this Act shall not  
7 apply to applications for asylum or withholding of  
8 deportation made before the first day of the first  
9 month that begins more than 180 days after the  
10 date of the enactment of this Act and no application  
11 for nonrefoulement under section 208 of the Immi-  
12 gration and Nationality Act (as amended by section  
13 2 of this Act) shall be considered before such first  
14 day.

15 (2) In applying section 208(b)(1)(A) of the Im-  
16 migration and Nationality Act (as amended by this  
17 Act) in the case of an alien who has entered or came  
18 to the United States before the first day described  
19 in paragraph (1), notwithstanding the deadlines  
20 specified in such section—

21 (A) the deadline for the filing of a notice  
22 of intention to file an application for  
23 nonrefoulement is 30 days after such first day,  
24 and



1           (B) the deadline for the filing of the appli-  
2           cation for nonrefoulement is 30 days after the  
3           date of filing such notice.

4           (3) The amendments made by section 4(b) (re-  
5           lating to adjustment of status) shall not apply to  
6           aliens granted asylum under section 208 of the Im-  
7           migration and Nationality Act, as in effect before  
8           the date of the enactment of this Act.

○

Mr. BRYANT. Mr. Chairman, may I be recognized?

Mr. MAZZOLI. The gentleman is recognized.

Mr. BRYANT. I would ask unanimous consent that this subcommittee will make coverage of this hearing in whole or in part by television broadcast, radio broadcast, or still photography, in accordance with committee rule 5.

Mr. MAZZOLI. Is there any objection?

[No response.]

Mr. MAZZOLI. The Chair hears none. It is so ordered. Thank you, John.

Mr. MCCOLLUM. Thank you very much, Mr. Chairman. I want to thank you for holding this hearing today. You and I and Congressman Schumer have worked on the asylum issue for more than 10 years. Several other members of this subcommittee have worked on it for many years, as well.

People say if it is not broke, do not fix it. Well, the asylum system, as you pointed out a minute ago, is broken, unfortunately. There is a huge backlog out there. I think the studies and the reports on the passage of the act that we are dealing with today that set all of this up back in 1980, anticipated about 5,000 asylum claims a year.

We now have more than 100,000 claims a year. We have this huge backlog that you have described. There is no question we need to address this problem in many facets.

I commend you for the bill you have introduced, H.R. 1679, to reform the asylum process. Although I may have a couple of reservations about the bill, I believe it is an excellent step in the right direction. I look forward to working with you on it and to hearing what the comments are today on it. It makes sense to eliminate separate adjudications for asylum and withholding of deportation, and to limit repetitive reviews while preserving judicial review.

I also would like to commend Mr. Schumer for reintroducing his bill on airport inspections. I support the preinspection stations called for in H.R. 1153, and believe they will help prevent the arrival in the United States of aliens, who do not have valid documentation.

The safety of true asylum-seekers is intended to be protected by requiring that such stations be established in countries that have refugee and asylum practices that are in accordance with the Geneva Convention on refugees or the protocol relating to refugees.

I continue to have reservations, as I did last year, about some features of the bill. For instance, I am not sure that it makes sense to increase pressure on inspectors to ensure that dangerous aliens are not admitted, while also putting additional time pressures on them by reducing the maximum time for inspection from 45 minutes to 30 minutes.

I also believe that while preinspection stations are important as a component of an effective effort to reduce immigration fraud, they cannot be the sole answer. The number of preinspection stations that can be instituted is limited, because of the cost involved, the time required for negotiating with the host countries, and the refusal of some countries to host such stations, or our determination that the human right's record of a country argues against the establishment of such a station.

Given the money involved in alien smuggling and the ingenuity of organized smugglers, fixed preinspection stations are likely to be avoided. That does not mean I do not support them. I do very strongly. I think that they will have an effect, but their effect will be limited.

The carrier consultants help address this particular problem, but they do not solve it. So while I support much of what is contained in both H.R. 1679 and H.R. 1153, I believe they leave an important loophole for fraud that my bill, H.R. 1355, will close. We cannot have preinspection stations at all foreign airports, and a percentage of asylum claimants will never show up for their asylum hearings.

In fact, I guess we have gotten some figures as high as 90 percent of those that come in at the airports, like JFK, and who are given these work permits, do not show up for at least their second hearing, which is the one that really counts.

I think that is a very shocking figure, so whatever we do to expedite under your bill or anyone else's process, once they get to the hearing, is not going to solve the problem of those who do not show up. If preinspection is not going to keep them from coming, we have to do more than that.

I have been working on various forms of so-called summary exclusion for several years. As I think you and Mr. Schumer will remember, the House adopted a summary exclusion provision in the 1984 version of the Immigration Reform and Control Act. Unfortunately, that bill did not become law, and we wound up without the subject of adjudication in the bill when we passed Immigration Reform Act in 1986. That was not, however, voted down by provisions in 1986; we just did not consider them.

Over the years, I have tried to address what I believe to be valid criticisms in order to provide protection to aliens with valid claims of asylum, while denying benefits to those who seek to exploit our humanitarian intentions. H.R. 1355 is the product of those efforts.

First of all, there is no reason why anyone who attempts to enter the United States without valid documents and who does not claim asylum, should not be immediately returned to his or her country without further hearing. My bill allows this.

Second, anyone who claims asylum should be able to present his or her claim before a person who has been specially trained to consider asylum claims. Under my bill, anyone with such a claim would be able to present it to a specially trained officer, who may require only that the person establish a credible fear of persecution, which is a standard that is not as high as the one that is in the law currently. Therefore, you would have a second stage if somebody presents this credible fear, to go before a hearing officer. I think that quite a number would, in fact, meet that standard, and would go before the hearing officer.

If the person transited a third country and did not either apply for asylum there or go to the U.S. Embassy to apply for refugee status, he or she, under this bill, would be returned to that country unless that country would be likely to return a person to the country from what he or she has a credible fear of persecution.

It sounds rather complicated. It is not. It is simply going to put a stop to the current forum shopping for a country of preferred asylum. That country is usually the United States.

My bill is not simply a response to the current growing problems of our international airports; although, it directly does address those problems. H.R. 1355 also addresses the problem of undocumented aliens coming to our shores or across our land borders in large numbers and claiming asylum. Some of the most notorious instances of this happening are the Mariel boat lift, the influx of Central Americans at Brownsville in 1989 and Chinese freighters over the past several months.

I want to make it clear, Mr. Chairman, that persons with valid asylum claims sometimes seek to enter the United States with fraudulent or no documentation. In some cases, that is their only means of escaping from countries in which they fear persecution.

My bill protects the ability of such persons to apply for and receive asylum. Moreover, it advances their interest by weeding out those who are clogging our system with patently invalid claims.

We all have an interest in immigration and in asylum and in a system that works effectively. I hope we will be able to proceed quickly with the reforms that are necessary to make our asylum process work for those for whom it was intended to benefit, and close it for those who are taking advantage and abusing it.

I look forward to the hearing today, and the testimony that is to be given, Mr. Chairman, and to the markup of what I hope will be a comprehensive bill or a series of bills on this subject in the coming weeks.

Thank you.

Mr. MAZZOLI. I thank the gentleman for his testimony. I now recognize the gentleman from Texas.

Mr. BRYANT. Mr. Chairman, I have no opening statement, except to say that I am ready to mark up a bill subject to the comments we get this morning. I am glad you had this hearing, and I am ready to get moving.

Mr. MAZZOLI. I thank the gentleman for his constant attention to the subject over the years.

I now recognize the gentleman from Florida.

Mr. CANADY. Thank you, Mr. Chairman. I would just like to thank you for your leadership on this issue.

The one point I would make is that I think that reform in this area is absolutely essential. I believe that if we are going to have meaningful reform, summary exclusion has to be part of that. So I am looking forward to the hearing, and I appreciate your leadership in this area.

Mr. MAZZOLI. Thank you very much. The Chair recognizes the gentleman from Illinois.

Mr. SANGMEISTER. Well, briefly, Mr. Chairman, I also want to thank you for the opportunity to speak and for holding these hearings on the many problems with our immigration law that this subcommittee needs to address.

I also would like to thank you and our colleagues, Mr. Schumer and Mr. McCollum, for introducing legislation to get the ball rolling.

As we know, events in recent months, such as the bombing of the New York World Trade Center and the shooting outside of the CIA headquarters, have highlighted the worst that can happen when



our immigration laws are abused, especially the abuse of the political asylum system.

Stories recently run on "60 Minutes" and on Brokaw reports have looked into the problems with our current law and the way we enforce it. In doing so, they have reminded each of us, and our constituents, that despite previous attempts to reform our immigration system, it remains far from perfect.

The way I see it, there are three main issues that need to be addressed in any effort to reform our current immigration and asylum laws. The largest, at least in terms of numbers, is probably illegal immigration.

While the open-door policy created by our current asylum system may have grabbed more headlines recently, I believe it is important to remember that the total number of asylum claims at JFK International Airport last year is approximately the same as the number of people illegally crossing our border with Mexico every 3 days.

Of course, the asylum system must be improved. Simply being able to say political asylum, should not be enough to give free passage into the United States for, at a minimum 18 months. I would like to point out that perhaps the first thing that should be addressed is the long delay in deciding an asylum case. I believe we could take away the incentive for many people who are coming in here with bogus asylum claims, if they knew they would be headed back home within 30 days of arrival in the United States.

Just as importantly, it would be much easier for people who truly deserve protection in the United States to have their cases heard promptly, and not have to wait a year and a half for their status to be finalized.

Finally, I believe there should be a discussion of just how many immigrants the United States should accept each year. While we all know America is a nation founded on immigration and the vast majority of us are the descendants of immigrants, is America now full?

I understand we currently accept about one million legal immigrants each year, and that many groups interested in this issue, believe the number should be lower. Some advocates believe it should be as few as 300,000 immigrants annually.

I am looking forward to hearing from the Immigration and the Naturalization Service and all other witnesses, both on the three pieces of legislation we are discussing today, and on the broader issue of what improvements can be made in the immigration system.

Thank you, Mr. Chairman.

Mr. MAZZOLI. Thank you very much. I now recognize the gentleman from California. I also welcome the next two gentlemen, who are new to our subcommittee. We are very happy to have them. The first of whom is Mr. Xavier Becerra of California. I recognize the gentleman from California.

Mr. BECERRA. Thank you, Mr. Chairman. I will only add a few remarks, because I do want to see us go through the hearing as quickly as possible, as well.

I just want to note that, at least in California, there are strong anti-immigrant feelings. In the face of that, I hope we are able,

through these bills, to really take a look at immigration reform and asylum reform that is needed.

I think it is appropriate that we have the Dalai Lama and the Nobel Laureate, Rigoberto Menchu, here today in Washington, DC. I think it sets a great tone for us to consider these bills. I hope that what we do is, keep in mind that there are people who have fled persecution in their countries of origin and are seeking asylum. We should try to tailor our legislation narrowly so we can address those valid needs, as well as address the problems of people coming in with no documentation.

Thank you very much.

Mr. MAZZOLI. That is exactly the correct idea, to have a proper balance here. I appreciate the gentleman reminding us of that.

I recognize the gentleman from New York, Mr. Nadler, in whose district, if I am not mistaking, is the World Trade Tower or the Trade Towers. The gentleman had a very close view of what was going on down there. I recognize the gentleman from New York, Mr. Nadler.

Mr. NADLER. Thank you, Mr. Chairman. Let me start by expressing my appreciation to you for holding these hearings and for asking me for this statement. Indeed, the World Trade Towers are in my district, and I was there most of that day watching what was going on and communicating with the Federal authorities.

One of America's proudest traditions is its history of serving as a haven for the oppressed. That tradition, dating to colonial America, is integral to our own sense of identity and to our special standing in the eyes of people around the world. Certainly, a great many of our constituents or their parents arrived here seeking sanctuary. My predecessor in this House, the late Ted Weiss, arrived in the United States as a refugee from Hungary fleeing the Nazis in 1938. So it is from that perspective that I approach any proposal to refashion our asylum laws.

With that said, I should also say that it is obviously the right of any nation to control its borders. While immigration has historically been the lifeblood of America, and certainly of my own city of New York, it is in our national interest to be able to establish and enforce a policy as to the rate at which we are able to absorb newcomers.

Therefore, I do not take lightly the allegation that thousands of people a year may be mocking our commitment to providing refuge for the oppressed by presenting false asylum claims as a way of gaining entry to the United States.

Accordingly, I am open to being convinced that there is a problem and, if convinced, to adopting curative measures. In approaching this issue, however, I will be guided by two cardinal principles. First, we must honor our tradition of providing a safe haven for the oppressed, and not dilute our asylum laws in such a way as to make their benefits unavailable to bona fide victims of oppression who reach our shores.

Second, each claimant must be afforded a full and fair opportunity with all due process provisions to present his or her claim to asylum under our laws, and to have that claim evaluated by a fully qualified adjudicator with appropriate and traditional procedural safeguards.



With those principles in mind, I am troubled by some of what is proposed in the bills we are considering today. In particular, I am troubled by the proposal in H.R. 1679 to require an asylum-seeker to establish that he or she would "more likely than not" face persecution in his or her homeland, instead of the present requirement that one have a well-founded fear of persecution. I am troubled by proposals found in H.R. 1679 and H.R. 1355 that would deprive an asylum claimant of the right to have his or her claim heard under various circumstances.

We must seek solutions to any problem of abuse of our asylum laws that will not undermine the purpose of those laws and that will protect fundamental principles of due process. Before we legislate on this issue, I believe we should consider carefully whether our immigration authorities could not meet the challenges and could not solve the problems by taking steps that are well within existing laws, such as giving proper hearings, as Mr. Sangmeister said, quickly.

I look forward to hearing the views of today's witnesses on these questions. Again, I thank you, Mr. Chairman.

Mr. MAZZOLI. I thank the gentleman from New York. We are now joined by the ranking member, also a gentleman from New York. He is one of the leaders here, in trying to put forth a package of bills.

I recognize the gentleman from New York, Mr. Schumer. We welcome you.

Mr. SCHUMER. Thank you, Mr. Chairman, and I apologize for coming in a little late. That is the fault of the shuttle.

First, let me thank you for your leadership on this issue. As you know, I have been concerned with this issue for the last several years. Now, of course, the World Trade Center bombing has heightened influence.

Let me just say at the outset I think this is one instance where, at least initially, we can have our cake and eat it too. We can and should and must tighten up the laws. They are a shambles right now.

The word is out around the world that it is very easy to fool the authorities. People with not even the slightest colorable claim for asylum can fool the authorities, get here, and stay here.

On the other hand, we also know that there is that Statue of Liberty in New York Harbor. To close the doors completely, to trample on the rights of people who we want to be here in accordance with the American tradition, would be equally foolish.

Fortunately, there is a happy middle ground. You can do a great deal to tighten up the laws before you really begin violating the rights of people who need help in any real or material way. I would say to some of my friends in the advocacy community, I think the lack of desire to move in reasonable directions could bring on an overreaction. So let us, as somebody said, "come reason together," and not just cling either to demagogic positions on the right or ideological positions on the left that do not address the real issues.

I am worried, Mr. Chairman, that the asylum process, which has been designed to serve noble ends, is simply becoming a giant loophole in which abusers far outnumber the legitimate claimants. Of

course, the cost of the abuse has been driven home by two tragic episodes.

In the first, Mir Aimal Kansi, a Pakistani national, got into the United States by making a bogus asylum claim, and shot and killed two CIA employees outside the Langley headquarters. The second, which is well-known, is the World Trade Center bombing. There, too, one of the missing suspects, Romsis Usef, entered the United States by claiming asylum. Shiek Omar Abdel-Rahman, who preached violence and may have been a ring leader of the terrorist group, was able to delay his deportation 2 years by making a bogus asylum claim.

These stories have made headlines. Perhaps the real story of asylum abusers is repeated 50 times a day, as 50 planes land at JFK Airport in New York. As abuse skyrockets, the credibility of the system declines just as precipitously.

That is what I am worried about: maintaining the integrity of the immigration laws. I have been an advocate of increased legal immigration. I think it is good for America, and good for my city, as well. To protect the genuine refugees, who rely on public support for asylum, Congress must act.

One important step is preinspection; stationing INS officials at foreign airports so that people without the proper documents can be screened out. One of the bills under consideration today is a bill I have introduced to establish preinspection at six of the most troublesome overseas airports.

As you know, Mr. Chairman, your subcommittee, the full committee, and the full House passed the bill last year. I was sort of amused when Mr. Novak on one of those shows said, "Oh, the abuse of the week. People like Chuck Schumer are rushing now to draft asylum bills in the wake of the World Trade Center bombing." He had not done much research, because the bill had passed the House 6 months before the World Trade Center bombing ever occurred.

However, I think this is one of those types of steps that is not going to solve all of the problems, but it can make a dramatic difference. I must say the opposition to this bill has come in the past from the State Department, not the INS and not the Justice Department.

Their basic attitude was that it would anger other countries to have some people running around their countries instead of having some of the people who are dangerous running around our country. That is the kind of logic, I think, that was repudiated in the 1992 election. They were so concerned with the diplomatic atmosphere—let's not get this country upset or that country upset—that they just dragged their heels in opening up these types of offices.

Preinspection is a real step forward, but I don't fool myself. We are also going to have to address the asylum procedures here at home. A lawyer who represents immigrants was quoted in the New York Times on Sunday as saying, the asylum process is "an invitation to abuse."

We have all heard the stories of entrepreneurs in foreign countries, who say, "I'll get you into America. Just come on the plane. I will show you how to rip up your documents. Give me your \$20,000."

It happens. That means something is wrong with the system. As I said, at the same time, I think while we must have a reform effort, there have to be certain principles that guide us.

We should not deport a person without having an impartial and properly trained official to determine whether the person faces real danger in his or her homeland. That is a cornerstone of the asylum process. I do not think we should get rid of that. Some have called for us to do that, and I think that is overreacting. That is when you start to begin paying a big price.

Second, asylum should not be a way around limits on legal immigration or a de facto expansion of those limits. It should be reserved for a narrow class of political refugees.

Third, we should look at our worldwide refugee effort as a unified whole. The days when asylum was one thing and refugees were another and the twain never met, is pretty much over. That is because of the modern inventions, such as the airplane. It is no longer that most people seeking asylum—some or few, yes—people from Haiti, or maybe some from Central America—but most are not making 4-month treks over mountains to come here. Most are simply buying a tickets and hopping on an airline and are here in 8 hours.

Finally, the asylum process should be as expeditious as possible, so that legitimate refugees can begin their new lives and phony claimants cannot exploit the system.

I think, Mr. Chairman, the bill you have introduced provides an excellent framework for that part of the reform. I think that some of the specific provisions should be explored in the hearing, but I believe you have taken us much of the way there, and I commend you for your time and effort that obviously went into the bill.

I thank you and I appreciate the indulgence. It took a little more time than I had thought.

Mr. MAZZOLI. The gentleman is always entitled to that. We appreciate his statement.

I think the totality of the statements this morning frame the issue. I think it also indicates that there is no one of us that is unmindful of the fact that the asylum system is a very important system for us to maintain. The fact that people come into this country via the asylum system, as they do the immigration system, adds to the strength and vitality and talent of this country, and that should not be shut off.

However, having said that, the system is being abused and manipulated. It is fraught with loopholes, and we now do have to make some changes. I think my colleagues have all made statements to that effect.

Before we go to our panel, I would ask you for a unanimous consent to put in the record at this point some material which I believe most of our colleagues have. It is a transcript of that "60 Minutes" program, which I might say triggered about as much discussion with me on the floor with my colleagues as about anything has in all these years.

Also, there is an article which appeared in the National Review last month entitled, "A New Jet Set," which was, interestingly enough, pointed out to me by another member of our subcommittee, Lamar Smith, who is not with us today. He had come across it. It

is an article by David Gergen, which appeared in the U.S. News and World Report last month also.

Then, there is a series of newspaper stories on the topic, including the New York Times article of this past Sunday, which has been referred to by several of our panelists, which pretty well describes the problems that we have to deal with.

[The information referred to follows:]

\*\*60 Minutes\*\*

Mar 14, 1993  
CBS

Segment: Profile: HOW DID HE GET HERE? Asking for political asylum gains easy entrance to US

HOW DID HE GET HERE?

LESLEY STAHL: In the two weeks since the bombing of the World Trade Center, a lot of attention has focused on Sheik Omar Abdel-Rahman. That's because the bombing suspect is said to have been a follower of the blind sheik, who moved to the US three years ago from Egypt. Sheik Rahman has denied any involvement in the bombing, and denounced it. But we wondered: How could a radical Islamic preacher who's been on the official US terrorist list for more than a decade get into the US in the first place, and what's he still doing here? What we found out is that the sheik is just one of hundreds of thousands of foreigners who have found an almost foolproof formula to stay in the United States.

Mr. DAN STEIN (Federation for American Immigration Reform): Every single person on the planet Earth, if he gets into this country, can stay indefinitely by saying two magic words: political asylum. You say 'political asylum,' you get a work card and you get an indefinite right to stay until the immigration service gets around to hearing your claim.

(Footage of Stein talking to Stahl)

STAHL: (Voiceover) Dan Stein runs an organization called FAIR, the Federation for American Immigration Reform.

Mr. STEIN: The word is out, 100,000 applications were filed last year. The American people are the last ones to know these things. But it's--it's--it's basically front-page news in Pakistan and in Iran and Iraq. Everybody knows...

STAHL: Everybody knows...

Mr. STEIN: ...if you get to the US, you say 'political asylum,' and that's it. That's your ticket in. You get a free ride.

(Footage of Stein and Rahman)

STAHL: (Voiceover) Stein says that Sheik Rahman's case is a perfect example of how the US immigration system has become a joke.



He now has applied for political asylum, has a work permit. How long is he likely to stay in this country, in your opinion?

Mr. STEIN: As long as he wants to.

(Footage of Rahman, a scene from the assassination of Sadat and Ajami talking to Stahl)

STAHL: (Voiceover) Who is this blind Egyptian preacher? He's the spiritual leader of Egypt's Islamic fundamentalist movement. It was Sheik Rahman's followers who assassinated Egyptian President Anwar Sadat in 1981. The sheik was arrested, tried, and acquitted, but according to Middle East scholar and CBS News consultant Fouad Ajami, Rahman continued his run-ins with the Egyptian government.

Mr. FOUAD AJAMI (CBS News Middle East Scholar): Arrested in '85, arrested in '86.

STAHL: For what?

Mr. AJAMI: Incitement, sedition, troublemaking, attacking the government. He was picked up in '85, he was picked up in '86.

STAHL: In Egypt.

Mr. AJAMI: In Egypt. He was picked up in '89. The US--the US Embassy in Cairo must have--must have had a huge file on him.

(Footage of Rahman under arrest)

STAHL: (Voiceover) Such a huge file that he was put on the US list of suspected terrorists even before Sadat's assassination. So how did a man with his record get into this country in 1990? On a tourist visa issued in the Sudan.

Mr. RICHARD BOUCHER (Former State Department Spokesman): Omar Abdel-Rahman was issued a US visa in 1990 in error by our embassy in Khartoum.

(Footage of Rahman in a crowd, men in jail and of Rahman sitting in a chair)

STAHL: (Voiceover) Ever since, the US government has been trying to get rid of the sheik, but he's still here, giving fiery speeches at mosques in Brooklyn and New Jersey. His main audience is back in Egypt, where he sends audio cassettes every week, calling on the faithful to overthrow the government. Just this week, a group of his followers went on trial in Cairo, shouting threats of more violence and chanting allegiance to the sheik. The US has become a very good place for the sheik's headquarters in exile.

Mr. AJAMI: You come to use the liberties that a great liberal society affords you. You can make--you can make telephone calls to Egypt; you can produce cassettes and send them to Egypt, in the same way that Ayatollah Khomeini flooded Iran with cassettes.

STAHL: From Paris.

Mr. AJAMI: From Paris.

(Footage of Rahman)

STAHL: (Voiceover) There have been reports, denied by the sheik, that his cassettes include calls for attacks on foreign tourists in Egypt. One such attack killed several people in Cairo on the same day as the Trade Center bombing. So with all this and the US government trying to get rid of him, what's he still doing here? Again, there's where those magic words come in: political asylum.

Mr. BOUCHER: They apparently did, in fact, revoke his permanent resident status in early 1992, which normally would lead to the person's departure since they no longer had the ability to stay in the United States. But then he applied for asylum, so now the asylum-process hearing is going forward.

Mr. STEIN: The US government acts like the Keystone Cops. One agency doesn't talk to the other. One agency says, 'Well, you shouldn't have given him the visa,' and the other agency says, 'Yeah, you're right. We'll take it away.' And in the meantime, the sheik goes to another office of one of the agencies and gets a visa without the other offices knowing about it. And then once he's got that visa, nobody can take it away from him. And when they finally do, then he files political asylum, and boom, another two years. It's a comedy of errors, but the problem is...

STAHL: But it's not funny.

Mr. STEIN: ...anybody can do it. And it's not funny.

(Footage of Rahman and of people at an airport)

STAHL: (Voiceover) Anybody can do it. And it's not nearly as complicated as the sheik's case makes it seem. The most amazing evidence of that can be found any day, every day, at New York's JFK Airport, where millions of foreigners arrive every year. We toured the airport this week with Bill Slattery, who's in charge of the Immigration and Naturalization Service in New York.

Now, you--you see, obviously, large numbers of people here every day. How many people a day, roughly, on average, come through here without proper documents or without any documents?

Mr. BILL SLATTERY (Immigration and Naturalization Service): Well, if you broke it down to a daily average, it would be about 50 inadmissibles a day.

STAHL: A day?

Mr. SLATTERY: A day.

STAHL: Every day?

Mr. SLATTERY: Every day, yes.

(Footage of people at customs)

STAHL: (Voiceover) That's 15,000 people a year arriving at just one US airport without proper documentation. But surely they're just put back on the plane and sent back where they came from? No, they're not, because the vast majority of those 50 a day ask for--you guessed it--political asylum. And once they do that, whoever they are, the law says they're entitled to an asylum hearing and a US work permit while they're waiting for the hearing.

Mr. STEIN: People are coming into JFK with these phony documents, no documents at all. They arrive...

STAHL: No documents at all.

Mr. STEIN: In many cases they have destroyed their documents by the time they get there in order to avoid...

STAHL: And we still let them in without any documents?

Mr. STEIN: If they say, 'I want political asylum.'

(Footage of two men being led by police)

STAHL: (Voiceover) In the middle of our interview with Mr. Slattery at JFK, a Pakistani airlines flight arrived carrying two men who asked for political asylum right at the gate.

So these are the--both of these men.

Mr. SLATTERY: Yeah.

STAHL: And they were on the Pakistani flight?

Mr. SLATTERY: That's correct.

STAHL: And they're now going to be taken from here and brought...

Mr. SLATTERY: Over to our secondary inspection area, where we'll do a--a more in-depth interview.

(Footage of the men being interviewed)

STAHL: (Voiceover) We followed them in and watched as immigration officers went through their documents, emptied their pockets...

Unidentified Man #1: He's got 300...

STAHL: ...searched their bags, fingerprinted them.

Unidentified Man #2: This page is counterfeit, bio page. The printing is all poor quality. He wants asylum.

STAHL: Political asylum?



Man #2: Political asylum.

(Speaks to different man in foreign language)

Man #2: Yeah. Him also, political asylum.

STAHL: But you're saying that both of their passports are--are counterfeit.

Man #2: Counterfeit, right. Yes. No question about it.

(Footage of one of the men at the interview)

STAHL: (Voiceover) He's come in under false pretenses, but he can seek asylum here anyway?

Mr. SLATTERY: Absolutely.

STAHL: Doesn't matter?

Mr. SLATTERY: He's protected by the Constitution, that's right.

STAHL: Well, no wonder people do this. It doesn't make any difference. They can still get in.

(Footage of the two men who want asylum)

STAHL: (Voiceover) While we were watching the two Pakistanis being processed, the exact same thing was going on with two other asylum-seekers at the other end of the hall, and this was the slowest day in the week at JFK. This young man said he came from mainland China.

Unidentified Man #3: He's looking for political asylum.

Mr. SLATTERY: Did he say why?

Man #3: No, he hasn't gone into...

Mr. SLATTERY: Hasn't expressed why.

Man #3: No.

Mr. SLATTERY: He's mainland Chinese?

Man #3: Yes.

STAHL: Did he come in without any papers?

Man #3: He said he was helped by a smuggler who gave him a document, but once he got on board, it was taken away.

STAHL: So he's admitting...

Man #3: Yes. He's admitting ass...

STAHL: ...all of this?

Man #3: Yes.

(Footage of a man at a hearing)

STAHL: (Voiceover) And this man came from Sri Lanka, also with the help of smugglers, who gave him a forged Canadian passport.

Unidentified Man #4: Why--why you want to come to America?

Unidentified Man #5: I want to go to Canada.

STAHL: He said he wanted to go to Canada, not the US, but he became an asylum applicant anyway because the US has no authority to send him to Canada and he claimed to be afraid to go back to Sri Lanka.

What would happen to you if--to you if you went back home?

Man #5: If I go, they would shoot me in the airport.

STAHL: They would shoot you?

Man #5: (nods yes)

STAHL: Why?

Man #5: That is the problem.

(Footage of the man being searched)

STAHL: (Voiceover) He says he's a Tamil, a member of a persecuted ethnic minority in Sri Lanka. But immigration officials say that many asylum-seekers are coached by smugglers to claim the same dire consequences if they're sent home, no matter where they're from.

What would happen if you were sent back home?

(Man #2 translates for Stahl and the man)

Unidentified Man #6: (Through Translator) They'll shoot me.

STAHL: They'll shoot you.

Unidentified Man #6: Yes.

STAHL: Because...

Man #2: Because he's a member of Pakistan People's Party.

STAHL: How many of those do you think are legitimately fleeing political persecution?

Mr. STEIN: One, 2 percent.

STAHL: Really? That's all?

Mr. STEIN: Sure. Most of them are coming from countries where the probability that they are fleeing at the point of a gun is very low.

(Footage of Man #6 being photographed)

STAHL: (Voiceover) Stein doesn't specifically question whether the people we saw are fleeing violence, but he worries that others might be coming to the US bent on waging violence.

Mr. STEIN: You could be a murderer, go through three safe countries, use a phony document at pre-inspection to get on the plane, flush the documents down the toilet when you get here, say 'political asylum' at JFK Airport in New York City, boom, you've got your work document and you're in.

STAHL: Now, does that really happen?

Mr. STEIN: Yes, it happens all the time.

STAHL: It happened with Mir Aimal Kanzi, a Pakistani who had a political asylum claim pending when he allegedly murdered two CIA employees outside the agency's headquarters in January. Kanzi is now a fugitive.

Mr. STEIN: Kanzi came in and said, 'I'm going to come in and lie my way through the airport, and then I'm going to make an asylum claim.' With the asylum claim, Kanzi got his work document. That enabled him to go to the Social Security Administration and say, 'I need a number, because I can't work without a number.' Then he went to the Virginia...

STAHL: And he got a number?

Mr. STEIN: ...and he got a number. Then he went to the Virginia Motor Vehicle Department, got himself a driver's license, and with that he was able to buy an assault rifle, even though the guy had no legal authority to be in this country. And this is happening all the time, and it's going to continue to happen unless we fix the system.

(Footage of a man seeking asylum)

STAHL: (Voiceover) Back at JFK, this week's asylum-seekers were still in handcuffs, but not for long.

Now, will the judge see them at JFK?

Mr. SLATTERY: No, no, there are no hearings held at JFK.

STAHL: So when will the judge see them?

Mr. SLATTERY: If they're detained, the judge will see them in the detention facility.

(Footage of men in a detention facility)

STAHL: (Voiceover) But most of them are not detained because the only facility that INS has for JFK is always full. It has just 100 beds. INS

would like to detain almost all new asylum-seekers, but hard as it may be to believe, it has no choice but to release almost all of them--hundreds every week--right on to the streets of New York City.

Mr. SLATTERY: They'll be given appointments to come to the Federal Building in Manhattan at a later date, non-detained, or will see the judges in about four months for the initial hearing, and that's just a--a hearing to see if they--if they want to see the judge. The first date available after that will be another 14 months. So actually, it would be 18 months before their--their case is heard on the merits.

(Footage of an asylum-seeker)

STAHL: (Voiceover) And that's if they show up for their hearing at all. Dan Stein believes that nearly 90 percent don't.

Mr. STEIN: They're only deciding 11,000 a year, so if you--if you've got 100,000 being filed and only 11,000 being decided, you can see that you've got a backlog that's going to take 85 years to clear out--if they stopped coming in today.

STAHL: So someone like that comes in--no papers--comes in from you don't know where, you don't know what they've done, you really don't even know their real names, and minimum, they're in this country for 18 months.

Mr. SLATTERY: Yes. That's correct.

STAHL: Do you want to make a comment on that?

Mr. SLATTERY: No.

STAHL: No.

(Footage of Stahl with Slattery and an asylum-seeker)

STAHL: (Voiceover) As you could tell, he did want to make a comment, but his bosses in Washington had told him he could only give us a tour, he could not give us his opinion. But one of his officers privately expressed the general frustration. He said, 'There's no way of finding out if these people are murderers, terrorists, or if they have AIDS. We just have to let them in.'

And it's very likely that by--well, let's see, it's 4:00 now--that by 7:00 tonight, they'll be out on the streets of Manhattan, and if they choose not to show up at this hearing, they're lost out there.

Mr. SLATTERY: That's right.

STAHL: All four of the men we saw at JFK walked out of the airport that evening, leaving the US government with no way to track them, nowhere to find them.

## ON POLITICS

BY DAVID GERGEN

# A dreadful mess at the INS

**A**s Al Gore sets out on his assigned mission to "reinvent government," Bill Clinton should call him with a hot tip: Check out the INS. The Immigration and Naturalization Service is a tiny agency within the Justice Department—its budget represents 0.1 percent of federal spending—but its failures are now causing massive ripples across the national landscape. Consider:

■ Mir Aimal Kansi is a Pakistani who legally came to the United States on a business visa in 1991. When his visa expired, he pulled the same trick as a growing number of other foreigners, applying for "political asylum." As the son of a rich family, he had no ostensible case—but the INS is so swamped that he knew it would take years to process him. Meanwhile, using his asylum request, he was able to buy an AK-47-type assault rifle. Two Americans are now dead, shot outside the CIA, and Kansi is on the lam back in Pakistan, charged in their murder.

■ Mohammed A. Salameh is a Jordanian who legally entered the United States on a six-month tourist visa in 1988. When his visa expired, he used another ruse growing in popularity: He simply disappeared into the mist. The INS is so understaffed that it can't keep up with people like Salameh and even tears up visa applications after a year. The next time the INS even knew about Salameh came during his arrest for the bombing at the World Trade Center. At least five Americans died there.

■ Sheik Omar Abdel Rahman represents the most infuriating tale of all. He is a blind Egyptian cleric who was charged—and beat the rap—in three terrorist cases back home, including the assassination of Anwar Sadat. Despite the fact that the U.S. State Department placed him on an official "watchlist," making him ineligible to come here, he persuaded the U.S. Embassy in Sudan to give him a visa. He then set up operations in the New York area, preaching violence from a "mosque." Waking up, the State Department revoked his visa, and the sheik left. But within a month, he slipped back in, evading INS inspectors at Kennedy Airport.

**Preaching violence.** That's not the worst of it: His visa revoked, the sheik applied for permanent U.S. residence—a green card—and the INS gave it to him! Last year, discovering its terrible series of blunders, the INS began deportation proceedings against him, but—no surprise—he now has lawyers, has applied for asylum, and his case could be pending for years. So far, authorities

haven't pinned anything on him in the World Trade Center case, but they note that Salameh often came to hear him preach violence against America and they have informally linked his Islamic cell to the New York murder of the militant Rabbi Meir Kahane.

Ready for more? Last week, the *Los Angeles Times* disclosed that in 1990, the L.A. office of the INS, prompted by the Australian government, began investigating David Koresh. He was said to be visiting Australian shores and

recruiting young women there to join his L.A. cult—for sex as well as religion. Picking up the scent, the INS found evidence that Koresh was indeed helping Australian women flout U.S. immigration laws. Before INS agents could swoop in, Koresh and as many as two dozen women fled to Waco, Texas. Time to call in the Texas posse, right? That's not the INS way. Understaffed, agents in Los Angeles reportedly told the Australians that if they really cared, they should take up the matter with the INS in San Antonio. End of case—until two weeks ago, when four federal officers were gunned down trying to bring in Koresh.

Is the INS a bad joke? Not really. For years, it has cried out that despite the best efforts of its agents, and there are some very good ones on the Border Patrol, it has been overwhelmed. First came the millions of Hispanics pouring over the U.S.-Mexican border, a flood that continues unabated. More recently have come the terrorists and malcontents arriving by air, arguably legal but finding new ways to beat the system. Last year, about 15,000 landed at Kennedy Airport with no documents or fraudulent ones. They immediately asked for asylum and, because detention facilities are so small, most were given a hearing date far in the future and turned loose. Don't count on seeing them again.

William Barr, the outgoing attorney general, tried hard to fix the INS but was mostly blocked by Democrats in Congress and Republicans sleeping at the White House. "The agency is still in very bad shape," he says. But Barr has some excellent ideas for repair: INS agents posted at key airports overseas to check documents, summary deportation proceedings to weed out patently phony claims for asylum, better information systems, a beelie-up force. What's needed won't turn the United States into a police state but will make it a little safer for its citizens. Mr. President, please call the veep—fast.



Sheik Rahman. Beating all the raps

*'His visa revoked, the sheik applied for permanent residence. INS gave it to him!'*



## On the Border?

# THE NEW JET SET

Think the Rio Grande is a porous border?  
Try New York's JFK, where  
anyone can enter through  
the magic of political asylum.

IRA H. MEHLMAN

IT'S a slow day at New York's John F. Kennedy International Airport. Mondays usually are. "You should be here on a Friday or a Saturday, that's when the action is," says one of the uniformed immigration inspectors who deal with up to 1,300 political-asylum claimants a month.

At the secondary inspection area in the East Wing of JFK's International Arrivals Building, a Liberian national is entering a claim for political asylum. He is traveling on a British passport which he purchased for \$300 in Bangkok. The flight that he arrived on several hours earlier originated in Tokyo.

The man, about 30, has his lines well rehearsed: "My uncle was killed in an attempted coup. He was a soldier in [Samuel] Doe's army."

"What would happen if you would go back?" asks a skeptical officer from the Immigration and Naturalization Service.

"I'm afraid of the situation," replies the Liberian.

"What would happen?" insists the officer, a man who has clearly heard it all before.

"My father was killed," the Liberian states emphatically.

"When?"

A long pause. "February. February '92. My mother is in Ghana."

"When did she go?"

"I don't know."

"Did she go to Ghana alone?"

"I cannot say."

The interview drags on. Both men are going through the charade. The Li-

berian will be out on the street in a matter of hours—he knows it and so does the officer.

The political-asylum claimant left Liberia in 1988, stowing away by ship to Thailand. Two years later he moved on to Malaysia, then back to Bangkok, followed by a stint in Japan. Frustrated by poor earnings over the past four years, he's decided to try the land of opportunity: the United States.

He has a bogus passport, he's been out of Liberia for four years, but he knows the magic words that will get him past the harried officers at JFK. Once he utters "political asylum" his chances of remaining in the United States are 93 per cent.

"We're being deluged. It's scandalous," complains the officer filling out the papers on this case. "In a matter of hours he's going to be walking out onto the street joining the ranks of the unemployed. We don't know anything about him. We don't know if he has AIDS. We don't know if he's a murderer." In most cases immigration authorities don't even find out a real name. It's a complaint heard over and over again from any of the 360 immigration officers who work America's most unguarded border—JFK.

Last year 14,688 excludable aliens attempted to enter the United States through JFK, nearly triple the number just two years earlier. Of these, 9,194, or 63 per cent, asked for political asylum. All but 428 of them had either fraudulent documents or no documents at all.

The deck is stacked in favor of the

aliens. The detention center at JFK airport has a maximum capacity of 100 beds and only 12 to 15 vacancies for some 1,300 new excludable aliens every month. For someone contemplating illegal immigration, it's difficult to find better odds. "During fiscal 1992, I detained only 1,169 of the 15,000 inadmissibles who came through JFK," says William Slaterry, New York district director for the INS.

In total, only about 7 per cent of the inadmissible aliens who come in at JFK can be detained. The rest are simply released onto the street and asked to present themselves for a hearing at a future date. "We have no good, solid data" on how many ever show up for their hearings, says Duke Austin, an INS spokesman. "I know it sounds crazy, but it's just not collected." On background, other INS people concede that probably not more than 5 per cent of the airport asylum claimants are ever heard from again.

## Records, Anyone?

BEGINNING last October, the INS started keeping computerized records of asylum seekers who come through Kennedy and other major airports. INS also no longer lets a claimant leave the airport before it has scheduled him for a preliminary hearing before an asylum judge. The

*Mr. Mehlman is director of media outreach for the Federation for American Immigration Reform (FAIR). This article was written in his private capacity.*



first hearings under the new rules had been set for mid January, which means the INS will finally have some hard data about how many of these asylum seekers actually bother to show up. The new system won't make it any easier to apprehend and deport the no-shows, but at least INS will know how many people are scamming the system.

China and the Asian subcontinent are the prime sources of jet-set asylum seekers, accounting for more than two-thirds of the applicants at JFK. The remainder are from an assortment of countries in Africa, the Middle East, Eastern Europe, and the Caribbean. Though U.S. immigration authorities in recent months have moved to crack down on abuses through fines against the airlines and pre-boarding inspection of passengers in countries such as India and Pakistan, it has done little to slow down the flow.

By and large, the "jet people" phenomenon is well-orchestrated. Though some of the asylum seekers have made it to JFK on their own, most, particularly those from China, India, and Pakistan, rely on professional smugglers. For a fee, generally in the \$30,000 range, the smuggler provides them with an airline ticket, a high-quality phony passport (which, if it's not destroyed en route to the United States, is often secretly turned over to the smuggler on the last leg of the voyage to be recycled for the next group of "refugees"), and a tale of persecution.

Veteran immigration officers at JFK say they can easily identify the smuggling rings' local agents hanging around the International Arrivals terminal, waiting for their clients to finish up their paperwork and be on their way: they're the ones with the cellular telephones.

For some arrivals, particularly among the Pakistanis, the U.S. is not even the final objective—Canada is. Being admitted to Canada for political asylum is like hitting the lottery jackpot: the benefit package there—including welfare, education, resettlement assistance, and more—is worth considerably more than a similar package here. But Canada does a much better job of overseas screening of potential asylum-seekers, weeding out the ones with bad documents before they board Canada-bound planes—so Kennedy airport, it seems, has become a back door to Canada.



Regardless of whether the United States is the asylum-seeker's ultimate destination, or just a stop along the way, JFK's International Arrival terminal has become a virtual open door for anyone who pushes on it. The law says that anyone who requests political asylum in the U.S., regardless of the circumstances of his arrival, must be given a hearing. The system is so backed up that it takes a minimum of four months to bring a claimant before a judge for a preliminary hearing and 14 months before the actual facts of the claim are heard in court. A particularly sore point for the INS's Slatery is the length of time it can take to resolve even the most bogus asylum claim. The judges "have no standards they are supposed to meet, no work performance plans," he complains.

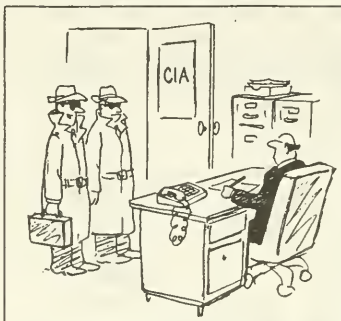
There are plans in the works to quadruple the number of detention spaces available at Kennedy by October of this year, but even that, Slatery points out, will be woefully inadequate. Even assuming that there isn't an increase in asylum claimants coming through JFK, 400 beds would still accommodate only 28 per cent of the current traffic.

If anyone is less pleased about the whole situation than the INS, it is the airlines. Each time someone shows up without proper documents, it costs the carrier \$3,000 and the fine may soon be raised to \$5,000. The U.S. Government fined the airlines \$20 million last year for delivering undocumented or badly documented passengers to U.S. airports. Half of those fines were levied at JFK.

### Jet People?

THE West Wing of International Arrivals is a mirror image of the East Wing. In a room identical to the East Wing's inspection area sit three Indian nationals with white sheets of paper stapled to their jackets bearing their names (aliases, most likely) and the name of the airline on which they arrived. All three have arrived without passports, asking political asylum. Confident the minor inconvenience of the airport waiting room will soon be behind them, they offer no more information and claim not to speak English.

Sitting in a row in front of the Indians are five Chinese nationals who have also arrived without documents. "The Chinese don't have to claim polit-



"We'll get right on it, chief—which Hussein?"

ical asylum," says a Chinese-speaking agent who is handling the paper work. "They're all protected by the executive order" issued after the Tiananmen Square massacre. Though the order technically applies only to Chinese who were present in the U.S. prior to June 4, 1989, in practice it makes it virtually impossible to deport any Chinese national.

The five in the JFK inspection room arrived after an odyssey that would make anyone looking to pad a frequent-flyer account green with envy. Hong Kong to Paris. Paris to Santo Domingo. Santo Domingo to New York. The more indirect the route, the Chinese-speaking officer relates, the less scrutiny the travelers and their documents receive. There were seven people on their flight from the Dominican Republic: none had a visa to enter the United States, but all were planning to stay.

One well-dressed thirty-year-old woman was seeking political asylum based on China's single-child-per-family rule. "I'm afraid of forced sterilization if I return to China," reads her Q&A sheet, as filled out by the immigration officer. Her first child remains behind in China with the woman's mother. Her husband has been living in the U.S. since 1989. She doesn't know his address, but has a phone number for him in New Jersey.

A younger woman, in her late teens, stares shyly at the floor as she answers the questions posed in Chinese

by Officer Catherine Bryant. The younger woman does not directly request asylum. When asked why she is here, she replies, "I heard life was bet-

ter in the United States." She has no documents of her own, only the tattered business card of Bing Wong, a real-estate agent in the Elmhurst section of Queens who she describes vaguely as a distant relative.

Both women claim that they paid—or have promised to pay—the smuggler \$30,000. The older woman's husband may have been able to come up with the cash to smuggle his wife into the U.S. The younger one will almost assuredly be working off her passage for many years to come in the sweatshops or restaurants of Chinatown. Many of the Chinese being smuggled into the United States wind up in a state of indentured servitude or as foot soldiers in the Chinese underworld.

A Ghanian woman is sitting alone in the front row of the waiting room, sobbing uncontrollably. She has just disembarked from a KLM flight from Amsterdam. The Dutch passport she is carrying is a valid one, but it does not belong to her. The photo on the document bears a resemblance to her, but on close inspection it is clearly the photo of another woman.

The sobbing woman has been living in the Netherlands for the past two years. She has not requested political asylum there because she has an aunt in New York whom she wishes to join. Upon arrival in New York she claims political persecution, for the first time.

### Overload

POLITICAL ASYLUM was first codified into U.S. law in 1980, when Congress passed sweeping reforms of the refugee laws. At the time it was estimated that about 5,000 people a year would seek asylum in the U.S. In recent years, the number of asylum requests has exploded to about 100,000 annually. Because the system was never designed to handle anything approaching that volume, and because every claim must get a hearing, it can take years for the process to play itself out.

The system's Achilles' heel is the right granted to each person who presses a claim for political asylum to

nave his case heard by a judge. The more people who apply, the more the system becomes bogged down. The more bogged down the system becomes, the more inviting it becomes for those filing bogus claims.

Jonathan Fuchs, who represents Iceland Air and other Europe-based carriers, would like to see summary exclusion for obvious abusers of the process, particularly aliens who flush their documents down the airplane toilet and then ask for political asylum. "Flushers should not get an automatic right to go see a judge. Just because they get their feet on the ground in the U.S. doesn't mean they're entitled to a hearing," he claims.

The airlines would much rather put these people on the next flight back to wherever it is they came from, and not have to pay the \$3,000 fine for delivering an inadmissible alien to the U.S. "When someone arrives at JFK or any other international airport, they are at the functional equivalent of a border," and if they lack adequate documentation, they ought to be turned around and sent back, Fuchs contends.

Slattery would like to see summary exclusion for applicants who have entered by way of a third, presumably safe, country. The majority of claimants at JFK fall into this category. "If I have someone from China who has been through six or seven countries before finally asking for asylum when they hit JFK, I don't see why I should have to admit them," he says.

In striking contrast to your typical illegal alien who sneaks across the border, an asylum claimant who arrives at an airport without documents or with phony documents is almost always rewarded not only with admission to the U.S., but also with authorization to hold employment for as long as he can manage to clog the court's docket. With work authorization, the asylum abuser can obtain a Social Security card and a driver's license, the de-facto identifiers used by most Americans to prove eligibility for everything from welfare benefits to the right to vote.

Although the casual way in which we hand out these documents usually amounts to nothing more than the government aiding and abetting violation of our immigration laws, the consequences can be more serious. In the case of Mir Aimal Kansi, the man alleged to have gone on a shooting spree

outside CIA headquarters last month, that laxness led to two deaths and three other people being wounded.

Kansi, a Pakistani citizen, entered the United States through JFK in February 1991 using what the INS now believes was a phony business visa (which he overstayed anyway). A year later, Kansi applied for political asylum at the INS office in Arlington, Virginia. Using the work-authorization document issued to him by the INS, Kansi was able to obtain a Social Security card and a Virginia driver's license. With that license Kansi had all the documentation he needed to purchase the AK-47 rifle he allegedly used to go on his rampage. Ironically, although nearly a year had passed between the time he filed his asylum petition and the date of the shootings, his case had not been scheduled for a hearing.

### Enter EMK

**E**VEN WHEN the results are not quite so tragic, the abuse of asylum at JFK airport, though still relatively small, tends to have greater outrage value than other forms of illegal immigration. People sneaking past Border Patrol, even in much greater numbers, are less irritating than people who mock our humanitarianism. Senator Edward Kennedy, who chairs the Immigration and Refugee Affairs Subcommittee and who has traditionally worked for more liberal immigration and asylum laws, has dispatched two top aides, Jerry Tinker and Michael Meyers, to JFK to assess the situation.

After seeing the situation firsthand, Tinker, the subcommittee chief of staff, agrees that the asylum system is abused. Kennedy's subcommittee plans to hold hearings on the problem sometime in the spring. But Tinker believes the problem can be handled without requiring any new legislation. Additional detention facilities at the airport and quick hearings for asylum claimants, he believes, will deter people from abusing the system.

When Los Angeles International Airport boosted its detention capacity to 800 beds, asylum abuse all but stopped there. The addition of the extra detention space at LAX, however, also happened to coincide with the increase of asylum abuse at JFK. It seems likely, then, that simply

building more detention facilities at JFK will not solve the problem; rather, it is likely to shift it to some other airport less well-equipped to hold inadmissible aliens.

While Tinker opposes summary exclusion as premature and unnecessary, he does favor a quick airport hearing for applicants and the immediate return of those whose claims have no merit. This is precisely what was being done in the case of Haitian boat people until last May. "While we agree this is a real problem that needs to be nipped in the bud, I would like to see them have a hearing and be put back on a plane. I don't think civil libertarians could have any problem with that," says Tinker.

But they do have a problem with it,



"Remember, it's not whether you win or lose, but how much you make."

says Arthur C. Helton, director of the Refugee Project for the New York-based Lawyers Committee for Human Rights. A quick airport hearing and a prompt return flight for those whose claims are deemed to be totally lacking in merit is wrong, in Helton's opinion. "There would have to be a more substantial procedure" to ensure that an asylum claimant is guaranteed the full protection of the law.

Helton accuses Senator Kennedy and others of political grandstanding. The phenomenon of airport asylum seekers is "a relatively discrete problem, but it's one that policy-makers are quite tempted to fix because it's relatively controllable," says Helton. He points out that compared to the more than 5,000 illegal aliens who sneak across the U.S.-Mexico border every day, the 15,000 a year who bra-

zenly march through JFK are a mere drop in the ocean.

The ideal solution would be to screen out the abusers before they ever set foot on American soil. Under the law, a person must have physically reached the United States in order to press a claim of political asylum. A mobile corps of just ten agents moving from airport to airport to keep smugglers off-guard, says Slattery, would have a greater deterrence potential than the 360 agents currently at JFK.

### Oh, Canada

**T**HE CANADIAN Immigration Service tested a similar program for six weeks beginning in November, and their preliminary findings indicate a reduction in the number of bogus asylum claimants turning up at Canadian airports. Pre-screening of passengers before they board flights to the U.S. can work, but it is a somewhat dicey proposition for the INS and the airlines.

Neither the U.S. Government, nor the airlines want to appear to be harassing legitimate visitors. Adding to the problem is the matter of racial and ethnic sensitivities. Inevitably, somebody is going to raise an objection if the only passengers whose documents are closely scrutinized happen to be wearing turbans. Moreover, refugee-rights advocates have serious reservations about such screenings in countries whose human-rights records are suspect. Pulling someone with bad documents out of line in London or Paris is one thing. Pulling that person out of line in Karachi or Bombay is quite another matter, says Helton.

The number of people seeking political asylum will continue to grow as long as the odds of beating the system remain so high. Other democratic countries have concluded that the only way of dealing with asylum abuse is through summary exclusion of people they know are abusing the process. In some European countries, people who show up without documents, with phony documents, or who have traveled through other safe countries are simply presumed to be asylum abusers and are sent packing.

In a highly mobile world filled with billions of desperately poor people, some of the rules may have to be reconsidered. Our commitment to due

process is admirable, but it has clearly become a magnet for abuse. Under such circumstances, blind obeisance to the notion that every human being on planet earth is entitled to a day in an American court, no matter how frivolous the claim to asylum, can only undermine our ability to protect the truly persecuted.

Applying to come to the United States as an immigrant or a refugee can entail years of waiting. Entering illegally means risking apprehension. Going the political-asylum route, however, means no waiting your turn, a set of documents entitling you to work, and a virtual assurance that you'll never be caught. The only thing that's surprising is that far more people haven't caught on.

Back in the East Wing of International Arrivals at JFK, a Dominican who has been sitting in the secondary inspection area for about 24 hours—the immigration officers suspect he is a criminal—gives up and asks to be sent home. He's destined to be one of the unlucky 7 per cent who winds up in detention. A return flight home sounds like a much better option.

A victory of sorts—at least for now. "He'll try again," says the immigration officer as he begins filling out the inevitable forms. □



(The New York Times, April 25, 1993)

# PLEAS FOR ASYLUM INUNDATE SYSTEM FOR IMMIGRATION

## ABUSE IS CALLED RAMPANT

Only 150 Officers Are Assigned  
to Evaluate Cases of More  
Than 250,000 People

By TIM WEINER

Barely two years after it was altered to abolish harsh and arbitrary procedures, the American system of political asylum cannot cope with the growing crowds of people at the nation's gates, immigration officials say.

Nationwide, more than 250,000 foreigners are waiting in line to see one of only 150 asylum officers. Some have been waiting for years. All say they fear persecution at home, and immigration officials estimate that tens of thousands really are running for their lives. Under the law, most are allowed into the United States immediately, physically on free soil, but legally in limbo.

Because of the backlog, half have no hope of a hearing in the foreseeable future and thus no resolution of their cases.

"Our twin goals are compassion and control," said Gregg A. Beyer, director of asylum at the Immigration and Naturalization Service. "For half the people applying for asylum, we are giving neither."

### Abusing the System

Many of those who apply for asylum are abusing the system, officials say, using it as a way to better their lives rather than to flee repression. More than a few frauds and felons are among them, and the overwhelmed asylum system cannot tell the terrorist from the terrified.

Congress, after learning that a major suspect in the World Trade Center bombing entered the nation by pleading for asylum, will begin hearings this week on proposals to put thousands of arriving asylum-seekers on the next flight out.

"Our national philosophy is to accept people fleeing persecution," said Verne Jervis, an immigration agency spokesman. "We don't want to turn them away. There are good people who deserve asylum, no question about it. But it's so easy to defeat the system, a 10-year-old could do it. There are bad people who show up and say, 'I'll be killed if you send me back.' And we have no choice but to admit them."

### The Bad With the Good

Immigration officials and immigrants advocates agree that the system is not working, but disagree as to why. INS officials say that legal reforms intended to insure that asylum-seekers are treated with justice force them to admit the bad with the good. But critics of the agency say it has so few asylum officers trained to uphold those rights and root out wrongdoers that the system cannot help but fail.

Each day the ideal of political asylum confronts reality at places like

# Asylum Pleas Overwhelm U.S. Immigration System

Newark International Airport, where last year 23 officers faced 23,743 people who sought asylum, and at Kennedy International Airport, where dozens of asylum-seekers with false travel documents, or no documents at all, enter the United States each week. Immigration officers say an international grapevine has identified Kennedy as an easy target.

"I've been here 17 years and I've never seen anything like it," said John Miranda, an enforcement officer at Kennedy. "If all of these claims were valid, I'd let them all in. That's what this country's all about. But 9,000 people came through here last year looking for asylum. It's my job to identify them, and sometimes I don't have a clue."

Last year, 103,447 people from 154 nations sought political asylum in the United States. The greatest numbers came from Guatemala, El Salvador, the former Soviet Union, the former Yugoslavia, China, Cuba, India and Pakistan. By September 330,000 people will be waiting for hearings. If the nation sealed its borders, the last of them would not be heard until well after the turn of the century.

The asylum problems reflect those of the nation's immigration system as a whole, which each year tries to control millions of people seeking to enter the country legally and illegally. Many arrive on tourist visas and overstay the legal limit, some are smuggled in or otherwise cross the borders illegally.

Nearly one million foreigners applied for citizenship last year. One in ten asked for asylum, one in seven were refugees selected abroad for resettlement in the United States by the State Department.

## New Corps Redefines A Cold-War System

America's asylum officers were hired in 1951 to reform a cold-war system that was often cruel and capricious. No Federal asylum law existed until 1950, and no regulations defined the law until 1990. In their absence, the process was politicized.

"People fleeing from communism had an open door, but people fleeing death squads run by our friends could not enter," said Maurice Roberts, a senior immigration official for 25 years.

In the 1980's, thousands seeking asylum from El Salvador and Guatemala were jailed and deported. These were "years of seemingly purposeful blindness" at the agency, Justice Harry Blackmun of the Supreme Court wrote in a 1987 case that said the agency had violated basic asylum standards.

Roger P. Winter, the former director of the United States Office of Refugee Resettlement, said "People wound up in jail for years. Asylum became a real battleground, a stunning example of how arbitrary a system can be."

With the collapse of the Soviet Union, a system that had been set up largely for people fleeing communism was forced to redefine itself. The immigration agency created the asylum officer corps to supplant agency enforcers who were, in effect, police officers acting as judges. The new corps has won praise from many quarters for fairness.

But as the system gained a measure of compassion, it may have lost a measure of control. It has become less abusive, but more abused by people seeking to defraud it. An immigrant can arrive at an airport, having destroyed his travel documents, plead for asylum and leave with only a tentative court date in 1995.

The fledgling corps of 150 asylum officers is far smaller than its counterparts in Australia, France, Germany, Holland, Norway, Sweden, Switzerland or Britain. Of those, only Germany has more people waiting for asylum than the United States.

One consequence is fraud. "It's an invitation to abuse," said Michael Maggio, an immigration lawyer in Washington. "But if you're a bona fide refugee, the system's a horror."

Muzaffar Chishti, who heads the National Immigration Forum, a coalition of legal and church groups, said he and his fellow advocates continued to the problems. "We reformed the system to address the awful practices of the past," he said. "The reforms were well intended, thoughtful, humane. But they led to a considerable amount of fraud."

In 1991, said Mr. Chishti, immigrants began "shopping for airports." JFK was seen as particularly porous. There are asylum-seekers from all over the world where whose claims are fraudulent. "So we have a mess."

The mess confronts William S. Slattery, the immigration service's deputy director for New York, as he paces in the agency's pastel holding room at Kennedy International Airport, where 20 asylum-seekers wait for

on an average day. He said Congress must change the law to allow him to send most of them packing after a quick hearing at Kennedy.

## Where Compassion And Control Collide

The issue is "Who's going to control the borders of the United States?" he said. The aliens have taken control. The third world has packed its bags and it's moving.

The immigration service's holding room at Kennedy is where the ideals of compassion and control collide. Carlo Bryant, an "inspector" for the agency, is taking a 17-hour flight home from Fuzhou, China. He is 43 years old, wearing a nervous smile and a cheap suit. His pockets hold no visa, no passport. The immigration service has no idea what flight he came on.

Mr. Wang said he had a smuggler \$15,000 to help him escape his homeland. He wants refuge from China's birth-control edicts, taking a side street to asylum opened by the Bush Administration. He has four children; the limit is two. He lost his job for breaking the rules, he said.

I always heard there is plenty of opportunity here," he told Mr. Bryant.

Mr. Wang will be released for now. The immigration service will not

force asylum-seekers to return to China. But it may return Mr. Wang to the country he came in from, if it can figure out where that was.

Next case, Yonis Elime Okiye, 28 years old, a handsome Somali in a blue blazer and elegant Italian shoes. In perfect English he tells a moving story of imprisonment and torture at the hands of warlords in Mogadishu, of fleeing to Yemen, then to Milan, where he bought a fake Ethiopian passport and visa for \$1,000. He destroyed them over the Atlantic.

"It is my hope and I do expect that the American Government will assist me out of a sense of humanity," he said.

Mr. Miranda, the immigration agency's port director at Kennedy, is skeptical of Mr. Okiye and his soft shoes. "This guy, he knows the score," he said. Most of the visas Mr. Miranda sees from asylum-seekers are altered or false. That confronts him with a moral and bureaucratic problem.

"The fact that you present a bad document does not mean in and of itself that you are bad," he said. "It's logical that someone fleeing from a bad place has a bad document. Sure, it's a bad document, but is the claim real? What happens the first time I send someone back to — it may not be a death squad, but imprisonment?"

Mr. Miranda hews to a system of sorts: when aliens seek political asylum, the immigration agency takes down their histories and tells them they have rights to a hearing and a lawyer. They may be jailed, but the agency's 400 beds in New York usually are filled. In most cases, they are free to go to seek a temporary work permit and to wait for a hearing.

Some immigration enforcement officers take a dim view of the process, rather than give every asylum-seeker a hearing, they want fewer applicants with fewer rights.

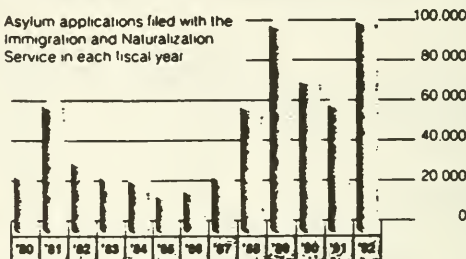
## For the Oppressed, 'Cities of Refuge'

Many of those rights are based on Biblical and international laws that say people with a well-founded fear of persecution will not be refused asylum. In a world where, according to Amnesty International, 142 nations torture, kill or arbitrarily jail their citizens, said Mr. Winter, "political asylum rests on the idea that if you run from your government, we will not send you back."

The idea is found in the Old Testament's Book of Numbers, where God commands Moses to build "cities of refuge" both for the children of Israel and for the stranger, and for the sojourner among them. And it is woven in the lines of Emma Lazarus's 1893 sonnet, "The New Colossus" written for Russian refugees fleeing pogroms and inscribed on a

## IMMIGRATION

### Seeking Asylum In the U.S.



### WHERE THEY CAME FROM

Top 10 countries of origin of asylum applicants in 1992. These immigrants accounted for 78 percent of all applicants.

1 Guatemala	43,834	6 Mainland China	3,440
2 El Salvador	6,730	7 Pakistan	3,323
3 Soviet republics	5,823	8 India	3,160
4 Haiti	5,291	9 Cuba	2,368
5 Philippines	4,012	10 Yugoslavia	2,313

Source: Immigration and Naturalization Service

tablet beneath the Statue of Liberty:

*Give me your tired, your poor,  
Your huddled masses yearning to  
breathe free. The wretched refuse of  
your teeming shore. Send these, the  
homeless, tempest-tost, to me I lift  
my lamp beside the golden door.*

To Dan Stein, director of the Federation for American Immigration Reform, the nation's leading anti-immigrant lobby, Lazarus's lines are a sentimental vestige of a bygone America. "Forget about the lamp and the door," Mr. Stein said. "No more standing in front of the statue welcoming the world. We cannot accommodate even a fraction of the people who want to move here."

Mr. Stein has won attention in Congress by underlining the fact that Ramzi Ahmed Yousef, the missing suspect in the World Trade Center bombing, entered the United States without a visa in September by pleading for political asylum. He wants to replace the asylum laws with a system of summary exclusion, by which nearly everyone seeking asylum could be turned away.

"Unless the system changes, we're going to have a bloody battle and it's either going to be settled by effective political leadership or it's going to be settled in the street," Mr. Stein said.

Both houses of Congress will hold

hearings this week on bills to restrict asylum through summary exclusion, to put immigration service inspectors in international airports, and to expel asylum-seekers whose papers are not in order. Some staff members for the Senate Judiciary Committee also are talking about doubling the asylum officer corps, but they predict some form of summary exclusion will be enacted. They say Mr. Stein's call has been heard loud and clear.

"It struck a chord," one said. "Frankly, it's fear — fear that we're being inundated by people we don't know anything about."

Fear is no rationale for law, said Demetrios G. Panademetris, director of immigration policy at the Department of Labor from 1985 to 1992. "You need a system that is going to be true to the highest possible standards," he said.

The fall of communism took away the "political glue" that held asylum policy together, he said. "Now far too many people may be willing to say we should eliminate the asylum system. We have a responsibility to protect people. A humane, compassionate but tough system has got to make hard, hard political decisions. Are Soviet Jews people that need to be protected? Are Cubans? These are questions that people die over."



The New York, Sunday, April 25, 1993

## A Forged Visa, but a Legitimate Case

By TIM WEINER

Critics of the asylum system say it has become a crooked avenue for illegal immigration. They point to thousands of asylum-seekers who come to the United States bearing bogus visas and passports purchased from smugglers, embassy officials or airline employees.

But Federal and international laws deliberately create a loophole for such people. The principle is straightforward: the state authorities who control legitimate travel documents are the same people from whom asylum-seekers are fleeing.

Not everyone pleading for asylum and clutching a forgery is a fraud, as shown by the case of Diomoi Smith, decided on Friday in a Newark immigration court. Immigration lawyers say Mr. Smith, a 22-year-old Liberian, is an example of someone who could be barred from asylum under legislation before Congress.

Mr. Smith, the eldest son of farmers, said he had left his village to become a business student at Cuttington University, a 100-year-old Episcopal college in Suakoko, Liberia.

Liberia, founded by freed American slaves in 1822, is suffering a bru-

### A judge rules that a student fleeing Liberia may remain in the U.S.

tal civil war. Its most murderous soldier is Charles Taylor, whose forces have killed hundreds of innocent people, according to State Department human rights reports. In May 1990, Mr. Taylor captured Cuttington University and made it a military base.

According to Mr. Smith's sworn affidavits filed with immigration authorities he was forced to serve as a bodyguard to a battalion commander. A few months later, Mr. Taylor decided the commander was a traitor and executed him.

Mr. Smith was imprisoned in a filthy cell with the rest of the slain commander's bodyguards and tortured for four months. "I was waiting for the end," he said in an interview

last week. "I prayed to God for a miracle to get me out of there."

On Feb. 25, 1991, a schoolmate freed Mr. Smith. They began a nine-day, 90-mile trek through the jungle toward the Liberian border. Stateless, without possessions, sleeping on the ground and going for days without food, Mr. Smith crossed into the Ivory Coast and made his way to the capital, Abidjan.

An aunt in Maryland sent him money. He bought a forged visa from a janitor at the Liberian Embassy for \$100 and flew to the United States in December 1991. After asking for asylum at Newark International Airport, he was questioned by immigration officers.

#### 'They Were Threatening Me'

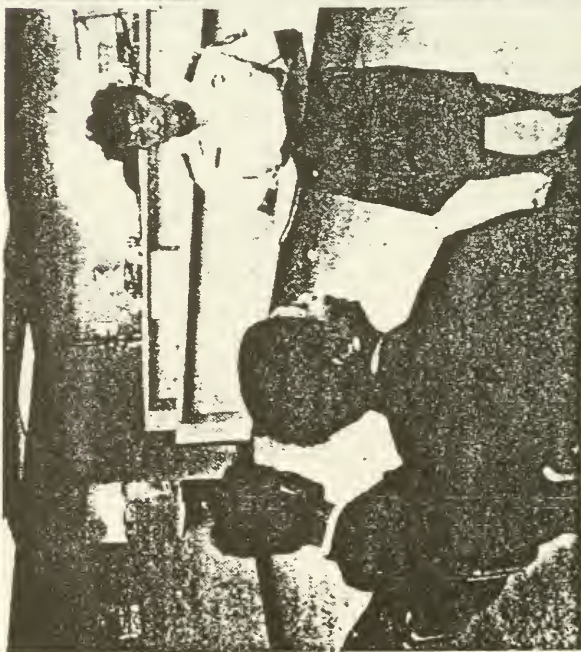
"It was like what I had gone through in Liberia," he said. "They were threatening me, saying, 'You are lying, tell the truth.' " But he was released pending a hearing.

Mr. Smith went before an immigration judge in Newark on Thursday, represented by Stephen H. Schwarz, an antitrust lawyer donating his time. For five hours, a lawyer for the Immigration and Naturalization Service argued that Mr. Smith's bogus visa was grounds for deportation.

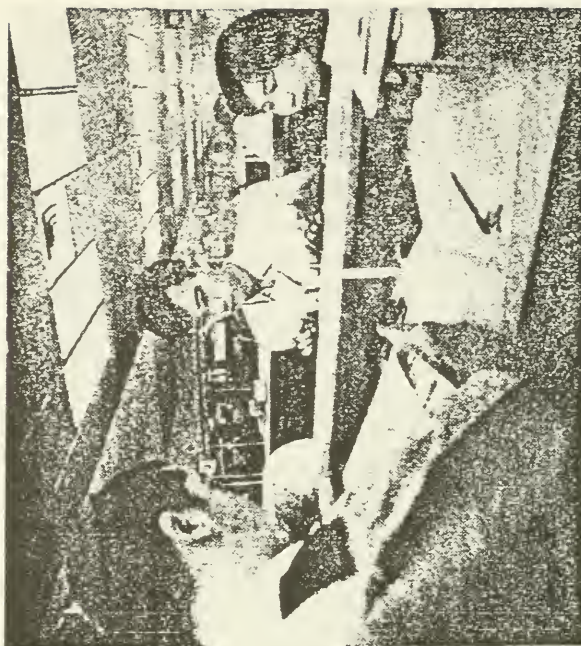
The immigration judge, William Strasser, disagreed. On Friday, he granted Mr. Smith asylum.

"The legal system in this country is very good," said Mr. Smith, who plans to attend a business school in Minneapolis. "For all I have gone through, I will be able to pick up my life and go forward from here."

R E G I O N



Nationally more than 250,000 foreigners are waiting to see one of only 150 asylum officers. Cathy Bryant, left, an inspector at Kennedy International Airport for the Immigration and Naturalization Service, interviewed two immigrants from the People's Republic of China



seeking political asylum. Harold Rose, right, an inspector for the I.N.S., filing papers for Xuan Kieu Nguyen and her brother Phuc Dinh, Vietnamese refugees who had been processed as legal immigrants through a program of the United States State Department.

Mr. MAZZOLI. I would now invite as our first panel, Ms. Chris Sale, who is the Acting Commissioner of the Immigration Service; and Mr. James L. Ward, the Acting Assistant Secretary for Consular Affairs, at the Department of State, who is accompanied by Ms. Priscilla Clapp, who is the Senior Deputy Assistant Secretary of Refugee Programs at the Department of State.

Let me first welcome all of you, and, of course, your statements will be made a part of the permanent record.

Before we go to Ms. Sale, I will just ask you to take a message back to Ms. Reno. It is a message I delivered, personally, to her last Thursday at her reception at the Justice Department. I think we need a full-fledged, confirmed Immigration Commissioner in the worst way.

I would be very satisfied if you were the person who is selected. We talked about that when you were nice enough to come by my office.

However, if that is not your fate, although I hope it is, to be in government, then someone has to be down there. We simply cannot function like this. We are 3 months into this administration. All I keep hearing are names being bandied about. I just think this is very difficult for you and for the Department in facing what you face today.

So if you would be so kind as to call Ms. Reno and extend to her my best wishes, and say that I am just saying to you what I asked of her last Thursday.

So, Ms. Sale, we welcome your testimony.

#### **STATEMENT OF CHRIS SALE, ACTING COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE**

Ms. SALE. Thank you, Mr. Chairman. I will be delighted to convey your concerns. Ms. Reno has, in fact, asked me, very personally, to assure you that, although I am in an acting capacity, that I am here to work with you on a solution to the numerous issues that are before us. Most particularly, I am to make sure that she receives a very clear sense of the committee's concerns.

Mr. MAZZOLI. Excuse me just 1 second, but I need to do this at the beginning of the day. Since we have a very long day on the panel, I believe each one of you has been asked to keep your statement to about 5 minutes.

Anyway, having said that, you may proceed.

Ms. SALE. Thank you, Mr. Chairman. We have a more elaborate statement that we will submit for the record, and I hope the committee has copies of it. I appreciate the opportunity to be up here before you today to discuss proposals to amend our immigration laws.

The administration is committed to the prompt and thorough review of the problem of illegal migration to the United States, especially through our ports of entry, and the abuse of our asylum procedures by aliens entering in this manner.

As you have already stated, I am the Acting Commissioner of INS. We are hopeful and expectant that a real commissioner will be appointed soon, and that he or she will play an important role in formulating policy decisions on behalf of the administration with this committee.



My testimony, therefore, will not suggest a final resolution to these important issues, but rather shall attempt to assist the committee in analyzing the proposals from a technical and operational perspective.

I am accompanied today by Mr. Jim Puleo, Mr. Chairman, in the capacity as Acting Associate Commissioner for Operations. We are all pretending at INS these days. However, we are, in fact, prepared to work with you.

Mr. MAZZOLI. Both of you are full-fledged professionals.

Ms. SALE. Yes, sir. Thank you.

Mr. MAZZOLI. I have worked with Jim for many years. That is not exactly the right terminology, but I think it does illustrate the point.

Ms. SALE. Thank you. The three bills before the committee today, H.R. 1153, H.R. 1355, and H.R. 1679, deserve thoughtful consideration, and they have received our consideration.

There is a broad consensus that legislation is needed to modify existing procedures, and to provide immigration officers with the tools they need to protect the safety and security of Americans, as well as to facilitate entry into the United States for those deserving of that.

The administration is firmly committed to the protection of legitimate asylum-seekers and refugees. Some features of our immigration laws intended to provide protection for asylum-seekers and refugees, are, as you have all alluded, being used by some migrants to circumvent immigration controls.

Elements of legal protection for refugees are being used by unscrupulous persons or smuggling organizations to gain entrance into the United States. Once here, such people manipulate existing regulations and procedures and the judicial system to remain a long time. Such people then gain access to all the benefits of American life, including employment authorization, social welfare benefits, education benefits, and just the protection and liberties that we enjoy.

We agree with you, Mr. Chairman, and with the sponsors of the other bills, that abuse must be stopped. However, we must be clear about the nature of the problem.

Thank you, sir. You took 2 of my minutes.

Mr. MAZZOLI. We have got to check our time meter here.

Ms. SALE. That is no problem.

Is it not the number of the asylum applications, but those that are inappropriately taking advantage of the problem. We should seek to make procedures quicker and more efficient. We also to continue to welcome both foreign visitors and permanent residents to our society, while we take steps to provide for national security.

H.R. 1153, Mr. Schumer's bill, authorizes additional preinspection sites, makes the visa waiver pilot program permanent, and promotes expedited airport processing. We believe expanded overseas preinspection would enhance passenger convenience, and would be an effective way to prevent attempted illegal entry into the United States.

This service has also had positive experience with the use of immigration officers overseas, as advisers to transportation lines, and

also to country officers overseas, host country nationalists, who assist us in managing fraud documents in preinspection sites.

We believe that the requirement to amend section 286 of the Immigration Act, which would reduce from 45 to 30 minutes the time allowed to inspect arriving airline passengers would cause operational problems. The 45-minute standard was only recently put into effect, as a matter of statute.

Although, we feel that we are, in fact, in the vast majority of the cases, complying with it, we are very concerned about being able to simultaneously comply with the national security concerns that are indicative of our being able to control the inspection procedures, and would not want to be in a position in which a standard would artificially circumvent our ability to do that.

Mr. McCollum's exclusion and asylum reform amendment would add a new ground of exclusion. They would make a person excludable if he or she presents forged, counterfeit, altered, falsely made, or stolen documents, or presents documents inapplicable to the alien, or if the alien fails to present appropriate documents. A person excludable under this new ground—and it is subsection 7A(i) of section 212A of his bill; it is an enormously complicated citation—would be ineligible to apply for asylum unless that applicant is arriving directly from a country in which he or she has a credible fear of persecution or from which he or she would be returned to such country.

We believe that grounds of exclusion would assist us in strengthening the Service's abilities to work, but poses some technical problems. My longer testimony speaks to these at length. We would ask the committee's perspective and the opportunity to work on a technical solution recognizing operational concerns in terms of how the law is written.

The most important change in H.R. 1355 is a provision for the removal by order of an immigration officer granting INS officers the authority to expeditiously exclude persons who attempt to enter the country under false, forged, or no documents without recourse to an immigration judge, would significantly streamline the procedures necessary to exclude persons from the United States.

Mr. Chairman, your bill also proposes a variety of alternatives to move our case processing expeditiously. It is very important that we be able to facilitate the work that we have to do so that we can be fair to the deserving candidates and deal with those that are not deserving in a way that meets justice where justice needs to be met.

H.R. 1355 provides a credible fear interview by a specially trained officer. This credible fear interview is similar to what we are now using in INS. It is what we call the asylum prescreening officers, which attempts to identify people in detention who have a credible fear, and release them from detention to hold that space for people who we need to detain.

That standard was also tested and used by asylum officers during the Guantanamo operation, for the Haitian boat people migration, and has been generally favorably received by applicants. We would propose that that would be an alternative or a vehicle to exercise some of the provisions that Mr. McCollum proposes.

Persons making credible claims would not be summarily excluded. They could apply for asylum procedural modifications that would provide further protection for genuine seekers. That is something that we would like an opportunity to explore with the committee in order to make sure that we are in compliance, both with the Constitution and with protections that we think are warranted for people with bona fide cases.

The Service's experience with persons interviewed under the credible fear standard may be interesting to the committee. Under the program that we are using for our detained aliens, we find that about 33 percent of the candidates, in fact, are released, because they meet that credible fear standard.

That is not to say that ultimately they would meet the full refugee or asylum standard. However, they do, at least, have what appears to be on its face a good enough claim for us not to detain them.

Under the Asylum Reform Act, Mr. Chairman, you would restructure and redefine the procedures for determining whether aliens should be granted protection on account of threats to life or freedom. That bill would streamline the existing adjudication and review of such claims, and require the Government to interview applicants and make decisions on their claims on a timely basis.

It would also substantially raise the burden an applicant would have to meet in order to meet refugee protection. We are ready and able to work with the committee on all of these proposals.

Mr. Chairman, thank you for your time.

Mr. MAZZOLI. Thank you, Ms. Sale. We appreciate it very much. [The prepared statement of Ms. Sale follows:]



PREPARED STATEMENT OF CHRIS SALE, ACTING COMMISSIONER,  
IMMIGRATION AND NATURALIZATION SERVICE

Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to appear before you today to discuss proposals to amend our immigration laws. The Administration, and in particular the Department of Justice and the Immigration and Naturalization Service (INS), are committed to the prompt and thorough review of the problem of illegal migration to the United States -- especially through our ports of entry -- and the abuse or misuse of our asylum procedures by aliens who attempt to enter in this manner.

I would, however, ask the Subcommittee's indulgence in one respect. As you know, I am currently the Acting Commissioner of INS. We expect that a Commissioner will be appointed quite soon and that he or she will play an important role in the formulation of Administration positions on questions of immigration policy. In addition, the Department is involved with the policy councils in the White House in an ongoing dialogue to develop, implement and review refugee and asylum policy. This testimony, therefore, will not suggest a final resolution of the important policy questions addressed by the legislative proposals now under consideration. Rather, I shall attempt to assist the Subcommittee by analyzing the proposals from a technical and operational perspective.

Strengthened Immigration Laws are Needed

The three bills before the Subcommittee today -- concerning preinspection overseas (H.R. 1153), summary exclusion at our ports of entry (H.R. 1355), and fundamental reform of our domestic asylum laws (H.R. 1679) -- are serious legislative proposals that deserve thoughtful consideration. There is a broad consensus that legislation and/or administrative reform is needed to modify existing procedures and to provide immigration officers with the tools they need to protect the safety and security of all Americans.

Each proposed bill contains provisions designed to address these problems. Each contains provisions which should be evaluated and reconciled in order to create a comprehensive reform proposal. I will speak to them in the order in which they were introduced.

The United States Commitment to Refugee Protection Continues

The Administration does have a firm and clear policy in its commitment to the protection of legitimate asylum seekers and refugees. This is a commitment to which the United States has long subscribed. We are a nation of immigrants. Many of these immigrants came to the United States from situations the refugee laws were designed to address: gross violations of human rights and persecution on racial, religious, political, and other

grounds. These immigrants and refugees and their families are among us, part of the fabric of our society.

#### Our Refugee Protection System Is Being Abused

It is clear that some features of our immigration laws, which are intended to provide protection for asylum seekers and refugees, are being used by some to circumvent immigration controls. Elements of legal protection for refugees are being used by unscrupulous persons or smuggling organizations to gain entrance into the United States for illegal migrants. Once here, such people manipulate existing statutory and regulatory procedures as well as the judicial system to remain for a long time. Such people can gain the right to the benefits of American life, including employment authorization, social welfare benefits, and educational services, even though they are not lawful residents of our country.

We agree with you, Mr. Chairman, and with the sponsors of the other important reforms under consideration today, that this kind of abuse must be stopped. But as we consider a plan to do so, we must be clear about the nature of the problem. The problem is not the number of applications from true asylum seekers. Rather, it is that individuals take advantage of our asylum laws and procedures because they know they will be able to remain in the United States during the protracted period during which their asylum applications are heard. We should seek to make procedures

more efficient and expeditious without penalizing legitimate international visitors or people who deserve our protection.

We should continue to welcome both foreign visitors and permanent residents who contribute to our economy and society, while we take steps to provide for national security and prevent the deliberate abuse of this country's generosity. Indeed, one objective of Congressman Schumer's bill is to facilitate the entry both of foreign visitors and of United States residents. The legislation which we are considering today must be evaluated for its effectiveness in curbing identified abuses while preserving appropriate means of protection for people who may have no other place of refuge.

**H.R. 1153 -- THE IMMIGRATION PREINSPECTION ACT OF 1993**

H.R. 1153, introduced by Congressman Schumer, authorizes additional preinspection sites, makes permanent the Visa Waiver Pilot Program, and requires expedited airport processing. This version is similar but not identical to H.R. 5555, which passed the House but not the Senate in the last Congress. The overall thrust of both versions is the same, though we note that H.R. 5555 contained a number of helpful modifications which had been jointly developed after consultation among the parties affected by the proposal.

H.R. 1153 provides for establishment within the next two years of at least three preinspection stations at high-volume foreign airports plus at least three preinspection posts at foreign airports which are the source of high numbers of aliens who seek to enter the United States using fraudulent documents or no documents. It also provides for the assignment of immigration officers to other foreign airports which are departure sites for high numbers of fraudulently documented aliens.

Expanded overseas preinspection would enhance passenger convenience. Pre-inspection facilitates the inspection process and expedites the admission of United States citizens and visitors alike. The Service has also had positive experience with the use of immigration officers overseas as advisors to transportation lines in high-fraud non-preinspection sites. There is a joint audit of pre-inspection by both the Department of State and the Department of Justice. We will defer detailed comment until after release and evaluation of that report.

The proposed legislation would also make permanent the Visa Waiver Pilot Program, eliminate use of additional immigration forms for visa waiver program participants, and permit exclusion and deportation of applicants for admission under visa waiver if an immigration officer determines the applicant is "not clearly and beyond a doubt entitled to land." Such determination would be considered a final order of exclusion and deportation, and the

applicant could be kept in custody pending such determination. No appeal would be allowed from any such determination of inadmissibility, although a person deemed inadmissible would not be barred from applying for asylum.

The proposed legislation would also make permanent the Visa Waiver Pilot program. The Visa Waiver Pilot Program has been effective in encouraging tourism and in reducing the non-immigrant visa burden on certain United States consulates overseas. Its summary exclusion authority has not proved problematic. We note, however, that H.R. 1153 provides a different mechanism for protection of asylum seekers than does H.R. 1355. If these bills are enacted or combined into a comprehensive immigration reform proposal, these provisions would need to be reconciled.

We believe, however, that the requirement contained in the amendment to Section 286 of Immigration and Nationality Act (INA) reducing from forty-five to thirty minutes the time allowed to inspect arriving airline passengers would cause serious operational problems. Recent events have brought to light newly encountered difficulties in keeping aliens who may be terrorists, or who are affiliated with terrorist organizations, out of the United States. Careful inspection of passengers coming to the United States, either through preinspection overseas or at a port of entry in this country, is essential to adequate screening of arriving passengers. The forty-five minute standard was



established only recently, and the INS is currently meeting this standard virtually all of the time. A number of factors, such as resources, facilities, and airline schedules, affect our ability to comply with this time limit. The INS cannot support a limitation on inspection time which would force it to compromise its enforcement responsibilities.

The bill would limit the Attorney General's ability to define by regulation the contents of passenger manifests to be submitted by transportation companies. The INS believes that the flexibility to collect additional information on passengers by means of the manifest is necessary to enable INS to automate the inspections process while satisfying enforcement concerns. Considering recent events, the INS believes that the Attorney General must be allowed to require information necessary to enforce the INA and assist other law enforcement agencies in their respective missions.

The bill would remove the requirement for personal interview from Section 235 of the INA. This provision preserves the Attorney General's discretion to determine conditions under which it is possible to waive the interview by the immigration officer during the inspection process. The INS believes that this can be done only under strictly controlled circumstances when identity and admissibility can be established through the use of secure

technology. We must retain the right to conduct full inspections when deemed necessary.

H.R. 1355 -- THE EXCLUSION AND ASYLUM REFORM AMENDMENTS OF 1993

The second bill under consideration is Congressman McCollum's "Exclusion and Asylum Reform Amendments of 1993," H.R. 1355. This bill would add a new ground of exclusion to Section 212(a)(6)(C) making a person excludable who presents forged, counterfeit, altered, falsely made, stolen documents, or documents inapplicable to the alien, or who fails to present appropriate documents upon arrival at a port of entry. Persons excludable under this new ground or under Section 212(a)(7)(A)(i) -- the current exclusion ground for aliens who seek admission without proper documentation -- would be ineligible to apply for asylum unless the applicant is arriving directly from a country in which he or she has a credible fear of persecution, or from which he or she would be returned to such a country. This determination would be made by an immigration officer with special training related to asylum law and country conditions.

The creation of a new ground and procedure for exclusion of persons who present fraudulent documents when seeking admission to the United States is designed to strengthen the Service's ability to deal with document fraud and alien smuggling, merits careful review. The language in the proposed bill, however, clearly includes persons for whom summary proceedings would seem clearly

inappropriate. For example, a permanent resident who is seeking to return to the United States with an alien registration receipt card (I-551), but who may have abandoned his or her residence, would be charged as being inadmissible under Section 212(a)(7)(A)(i). Under present law, the exclusion proceeding would entail an inquiry into a number of subjective and objective indications of whether the applicant had relinquished his or her residence in the United States. The summary nature of the proceedings contemplated by H.R. 1355 certainly would be inappropriate for this type of inquiry.

The language in the proposed amendment to Section 235(b)(6) dealing with when a person is deemed to have entered the United States could also be problematic. The provision whereby a person who has entered without inspection would be considered to have "entered" only after having been physically present in the United States for one year would likely give rise to a new use for fraudulent documents. Rent receipts, utility bills, and other documents would be marketed for the purpose of establishing one year of physical presence. While alternatives to this approach (such as reexamining the concept of "entry" and drawing the distinction between exclusion and deportation proceedings on whether the person has been inspected and admitted rather than on physical entry) might be worth exploring, we note that any redefinition of entry to expand the class of persons who are subject to exclusion (rather than deportation) proceedings would

raise the question whether such persons were thereby denied due process of law.

The most important change effected by H.R. 1355 is the provision for removal by order of the immigration officer. We share the Subcommittee's interest in streamlining procedures while affording appropriate procedural safeguards. This subject is under intensive review within the Administration.

The criticism most often heard of previous proposals for summary exclusion is that they might result in the return of genuine asylum seekers to countries in which they face persecution. Indeed, summary or expedited exclusion without an exception for credible asylum seekers would appear inconsistent with the 1967 Protocol Relating to the Status of Refugees.

In reviewing this issue, the Service's experience with persons interviewed under the Asylum Pre-Screening Officer (APSO) program may be of interest. This program is conducted in the 19 INS districts in which the Service detains substantial numbers of aliens in exclusion proceedings, and has been in place since April 1992. In the year since the inception of the program, approximately 1700 people have been interviewed by asylum pre-screening officers. These were people who appeared to be inadmissible because they had presented fraudulent documents, improper documents, or no documents, but who applied for asylum or

otherwise indicated a fear of persecution upon return to their home countries. As of March 15, 1993, the latest date for which statistics are available, 507 of these people, or about 33%, had been found to have a credible fear of persecution, and therefore a reasonable chance of ultimate success in their asylum claims. Under the terms of the APSO program, these people were recommended for parole pending further immigration proceedings. Almost all of them have been paroled. We look forward to working with the Subcommittee on this issue.

The provision of 235(b)(4) which allows for any immigration officer, other than the examining immigration officer, to challenge a favorable decision regarding an alien's admission is retained from the current language of Section 235(b). This precise meaning of that provision has never been clearly defined. See Gordon and Mailman, Immigration Law and Procedure, Revised Edition, Section 63.05 [1] [d] note. It would seem, however, merely to be designed to afford supervisory review of a decision to admit an alien. The retention of this language in Section 235(b) should not be read as an attempt to undermine favorable decisions relating to a "credible fear" rather than to the threshold question of admissibility.

Finally, we note that the proposed increase in penalties for alien smuggling from five to ten years would greatly enhance the deterrent effect of alien smuggling prosecutions.

H.R. 1679 -- THE ASYLUM REFORM ACT OF 1993

The "Asylum Reform Act of 1993" would restructure and redefine the procedures for determining whether aliens should be granted protection on account of threats to life or freedom. It would establish clear time frames within which aliens could seek protection from return to countries where they had been or would be persecuted. The bill would streamline the existing system of adjudication and review of such claims and require the government to interview applicants and make decisions on their claims on a timely basis. The bill would also substantially raise the burden an applicant would have to meet in order to be eligible for refugee protection.

As I have noted, structural change in the present system of protection for those fleeing persecution under Section 208 and 243(h) of the Act may be needed. However, the Subcommittee should consider carefully the implications of particular structural reforms, and whether the proposed change in the standard of proof required to establish eligibility for refugee protection responds to the problem of procedural abuse in the asylum process.

The current United States asylum system attracts applications from many people who are not genuine asylum seekers for two reasons: first, because it takes an inordinately long time to resolve an asylum claim and to remove those who do not qualify;



and, second, because nearly all applicants are entitled to work authorization in the interim. Meritless claims clog the system and inhibit our ability to grant asylum quickly and efficiently to those who really need it. Our principal goal should be to weaken the incentives to file a meritless application.

### Conclusion

We support the Subcommittee's investigation of methods to better safeguard the security of the American people, to reduce the flow of illegal aliens, and to improve asylum processing in the United States. We believe that reform is necessary. We agree that additional statutory tools would be crucial contributions to such reform. We are grateful to participate in the dialogue. While we do not believe that any one of the three bills we have discussed today is a fully satisfactory recipe for reform, we believe that each contains features that are useful in the dialogue on alleviating the abuse of our asylum laws.

Mr. MAZZOLI. I would just say, after the APSO, and the officer does that prescreening, and the persons are released, there is no assurance they are ever going to come back for any of the hearings thereafter nor assurance that they are ever going to qualify. We have a twofold problem with whatever we do here.

Any time they are released out, there is a problem of no-show, plus the problem of meeting the ultimate proof.

We welcome the gentleman from the State Department, Mr. Ward. It is nice to see you.

**STATEMENT OF JAMES L. WARD, ACTING ASSISTANT SECRETARY FOR THE BUREAU OF CONSULAR AFFAIRS, U.S. DEPARTMENT OF STATE, ACCOMPANIED BY PRISCILLA A. CLAPP, SENIOR DEPUTY ASSISTANT SECRETARY FOR THE BUREAU FOR REFUGEE PROGRAMS**

Mr. WARD. It is nice to see you again, Mr. Chairman.

Mr. MAZZOLI. And it is nice to see Ms. Clapp, as well. She has been with us before.

Mr. WARD. Yes. The first thing I would like to say about my statement, Mr. Chairman, is to apologize for the lateness in it reaching this committee.

Mr. MAZZOLI. I would have enjoyed having it at least last night or earlier yesterday.

Mr. WARD. I can only say this—

Mr. MAZZOLI. Is that another "acting" problem?

Mr. WARD. Well, in part, that is true, sir. There are many issues being covered here. Some of which have been mentioned. Some of them, such as the visa waiver pilot program, have not been mentioned by the members of the committee.

I suspect I was somewhat naive in not realizing the amount of clearance process that these issues would go through, since they are being looked at on an interagency basis, and actually by very senior levels in the new administration.

So, again, I apologize. When we finished it about 11 last night, I thought it would probably be too late to get it down until this morning.

Mr. MAZZOLI. Back in Kentucky, we say "better late than never."

Mr. SCHUMER. We were all in our office working then.

[Laughter.]

Mr. MAZZOLI. That's right.

Mr. WARD. I think I would also like to submit the testimony for the record. Rather than read any significant amount of it, I will just make my oral remarks on what seems to be the primary topic of the day, and that is the asylum procedures.

I think I would simply join the other voices in saying that the asylum abuse produces large backlogs in delays, as well as the expenditure of substantial amounts of limited government resources.

A wide scale abuse of the system means that the system is not available in an expeditious way for those who truly need it. Perhaps most important and most troubling is that abuse of the system creates a public perception that all asylum-seekers are opportunists who have found the way to remain in the United States indefinitely, in circumvention of our immigration laws.

This perception helps to undermine support for the asylum system and encourages people to forget that the United States is a country of immigrants. Many of them came to this country for fear of persecution at home on account of their race, religion, ethnicity, membership in a particular social group, or political opinion.

It leads people to forget that the United States has been the champion of the world's refugee, the yardstick against which other countries practices are measured, and the symbol of hope for some many oppressed around the world.

The challenge today is for the United States to continue its leadership on refugee matters, while at the same time making it clear that the abuse must stop.

Mr. MAZZOLI. Thank you very much, Mr. Ward. Let me yield myself for 5 minutes.

[The prepared statement of Mr. Ward and Ms. Clapp follows:]

PREPARED STATEMENT OF JAMES L. WARD, ACTING ASSISTANT SECRETARY  
FOR THE BUREAU OF CONSULAR AFFAIRS, U.S. DEPARTMENT OF  
STATE, AND PRISCILLA A. CLAPP, SENIOR DEPUTY ASSISTANT SEC-  
RETARY FOR THE BUREAU FOR REFUGEE PROGRAMS

Mr. Chairman, members of the Subcommittee, we are pleased to appear before you today to discuss three bills -- H.R. 1679, H.R. 1153, and H.R. 1355 -- all of which address issues which are of major concern to the Department of State. Because these bills all include provisions relating to this country's system for processing applications for political asylum, Ms. Priscilla A. Clapp, Senior Deputy Assistant Secretary in the Department's Bureau for Refugee Programs, will share with me the task of presenting the Department's comments.

Let us say at the outset that, because the inspection and other processing of aliens arriving at our borders is a responsibility of the Immigration and Naturalization Service of the Department of Justice, we will leave it to our colleagues from that Service to discuss the details of those processes and how the bills under consideration might affect them. There are four topics under consideration -- extension of the Visa Waiver Pilot Program, summary exclusion at ports of entry, overseas pre-inspection, and asylum reform. As you know, most of those issues are now the subject of our interagency review, so my comments today will avoid prescriptions that might prejudice the outcome of that review.

The issue of overseas per-inspection (addressed in H.R. 1153), has been the subject of a joint Justice/State Department audit. I will thus defer comment on pre-inspection.

#### Extension of the VWPP

H.R. 1153 includes a proposal to make the VWPP permanent. This proposal is identical with one introduced in the last Congress -- also by Cong. Schumer -- but not acted upon. The Department strongly supported last year's proposal and supports it equally as strongly now. The VWPP has been a success. First, from an enforcement standpoint, there is no evidence that waiving the visa requirement for these short-term visitors from the carefully selected countries has resulted in any meaningful incidence of abuse of our immigration laws. Second, there is nothing to raise a suspicion that the program has created internal security or other law enforcement problems. Third, the program has facilitated tourist travel to the United States and allowed its continuing expansion without hindrance.



The program is currently scheduled to expire on September 30, 1994. If that day comes without action to prolong the life of the program, the Department and our tourist industry (this country's largest single source of foreign currency earnings) will face a serious crisis. The millions of short-term visitors who come to this country annually from the qualifying countries would suddenly be faced again with the requirement of obtaining a visa to do so. The Department would be faced with the impossible task of re-establishing huge nonimmigrant visa operations in places such as Tokyo, London, Paris, Rome, major cities throughout Germany and elsewhere, without the resources to do so and without the prospect of obtaining them.

The disruptions which would result would be immense; losses of earnings in the travel and tourism industries and foreign relations complications with countries all of which are our friends and international partners. Worst of all, these results would be to no purpose. Allowing the program to expire and the visa requirement to be re-imposed would meet no identified need, solve no identified problem, eliminate no identified threat.

Some may continue to take a cautious approach to this matter, preferring to extend the program for another limited period rather than making it permanent. The Department sees no need for, or benefit from, such an approach. Extending the program for a limited period would simply postpone the inevitable day of reckoning, raising the possibility of the problems we have outlined on the new expiration date rather than on September 30 next year. The Department believes that five years is long enough to assess the benefits of the program and its problems. The benefits are clear; the problems are not there. The program should be made permanent now and we should turn our attention to the problems we do have.

#### Summary Exclusion

As you know, the Department works closely with the Immigration and Naturalization Service in carrying out our joint responsibilities for the administration and enforcement of our immigration laws. Not only do we work closely with the Service on a purely bilateral basis, we also participate with them on inter-agency working groups such as IBIS. While we are not operationally involved in the port of entry inspection process, we cooperate with the Service on related matters.

Consular officers are active in efforts to obtain cooperation from foreign governments and airlines in preventing aliens with fraudulent documents or no documents at all from embarking on flights to the United States. Intelligence about such operations is passed regularly to the Service, to help in the identification of such aliens when they arrive in the U.S.

#### Asylum Reform

Many of the proposals contained in H.R. 1679 provide the basis for a fruitful discussion of asylum reform. Incorporated in the bill are several unique ideas which, if enacted into U.S. law, would represent a significant departure from current practice and, indeed, from international parlance. As the United States has traditionally played a leadership role in promoting refugee protection worldwide, we must ensure that our ongoing commitment to the principle of refugee protection is not called into question. In particular, we are wary of the proposal to change the standard of proof applicable to affirmative claims in the U.S. away from the well founded fear of persecution standard. It is not at all clear to us that the asylum abuse problem is related to the legal standard employed. We suggest, however, that such a

change could negatively reflect on U.S. leadership on refugee issues in the global community and could have a negative impact on the practice of other states or our ability to enter into burden-sharing arrangements with other states. We look forward to working with the Congress on this important task.

The Department calls for review of U.S. asylum procedures to cut down on abuse of the system by those not genuinely in need of protection. Asylum abuse produces large backlogs and delays, as well as the expenditure of substantial amounts of limited government resources. Wide-scale abuse of the system means that the system is not available in an expeditious way for those who truly need it. Perhaps most important, and most troubling, abuse of the system creates a public perception that all asylum seekers are opportunists who have found the way to remain in the U.S. indefinitely in circumvention of our immigration laws. This perception helps to undermine support for the asylum system, and encourages people to forget that the U.S. is a country of immigrants, many of whom came to this country for fear of persecution at home on account of their race, religion, ethnicity, membership in a particular social group or political opinion. It leads people to forget that the U.S. has been the champion of the world's refugees, the yardstick against which other countries' practices are measured, and the symbol of hope for so many oppressed around the world.

The challenge today is for the U.S. to continue its leadership on refugee matters, while at the same time making clear that the abuse must stop. We cannot continue to sustain malafide asylum claimants -- as a result of the generous public benefits and opportunities afforded in this country -- at the direct expense of the American people. We welcome the initiative of the Congress, and this Committee in particular, in calling for consideration of potentially fundamental reforms and in inviting a broad range of views on this subject.

We must first ask ourselves what is broken about the system, and then proceed to consider ways to fix it. What first comes to mind in defining the problem is that the length of time of the process is in and of itself an invitation to abuse. The current lack of any incentive in favor of presenting claims in a timely manner is a primary reason for asylum abuse. We must, and can, develop ways to speed up the process without prejudicing the legitimate claimant. We welcome the opportunity to work with the Congress to dramatically reduce the time involved in adjudicating asylum claims.

This concludes our formal remarks, Mr. Chairman. We will be pleased to respond to any questions you or other members of the Subcommittee may have.



Mr. MAZZOLI. The gentleman from New York, Mr. Schumer, will be talking to you more about the position of the State Department on this issue. However, I think that you have really crystallized what Mr. Becerra said earlier today about the perception that all asylum-seekers are opportunist, and I think that is so terribly wrong. They are not all opportunist by any stretch.

However, the fact that we let some people opportune and maraud their way through this thing, does set up this perception which then yields to nativism and xenophobia. I think that is exactly the challenge this subcommittee has—to do something without further fueling that terrible fire.

Ms. Sale, let me talk with you for what is left of my time with regard to the situation at JFK. When Mr. Slattery—and I welcome him to the room, and it is always nice to see him—came by, he gave me some material, which he was presenting later that day, which I found very interesting.

I just wonder if basically you would agree with this data, that in fiscal year 1992 something like 14,688 or 15,000 persons were found inadmissible at JFK. Now, inadmissible means they got off the planes with the wrong documents or no documents, fraud documents, or whatever.

Of those, 9,180 claimed asylum. That is a 300-percent increase from the 2 years earlier, from fiscal year 1991.

Is that data that you would generally agree with?

Ms. SALE. Those are data that we agree with; yes, absolutely.

Mr. MAZZOLI. Then, in extrapolating, and that is always very dangerous to do, but if you were to extrapolate, you are talking about 18,000 to 20,000 inadmissible cases at JFK just this year—fiscal 1993?

Ms. SALE. The numbers this year are holding fairly constant with last year. We have not seen the rate of growth in the first quarter of this year, relative to the rate of growth of the first quarter of last year or the year prior. There is a difference of maybe 300 in this quarter over last quarter.

Mr. MAZZOLI. So we are talking about no less than last year or it may be a little more?

Ms. SALE. It is no fewer than last year. It is a little bit more. It does not yet appear to be an enormous number bigger than last year's number.

Mr. MAZZOLI. They generally conclude at JFK that there is an awfully lot of organized activity there. Is that your conclusion, too?

Ms. SALE. We feel strongly that in many instances, both because of the country of venue and the airline that is carrying them, that it is clear that although there are many isolated cases, there are also cases coming in, an organized way.

Mr. MAZZOLI. So, again, this does not injure Emma Lasarus and her statement at the foot of the Statue of Liberty, saying that a lot of this is an organized, ongoing opportunist activity?

Ms. SALE. That is our opinion, sir.

Mr. MAZZOLI. Very good. Now, Mr. Slattery supplied me with a very interesting world map, showing points of embarkation, transit points—fascinating stuff, to say the least—staging areas. Do you agree generally with that material? Is that pretty much consistent with your judgment?

Ms. SALE. Yes, sir.

Mr. MAZZOLI. Therefore, many of these people go through several countries before they ever arrive at JFK or at Newark or at L.A. or at Miami; is that correct?

Ms. SALE. To the best that we have been able to piece together through intelligence reports, that is, in fact, the case.

Mr. MAZZOLI. That's very good. So many of those countries are not countries in which that person has a problem?

Ms. SALE. They are not the country in which the person would be persecuted if, in fact, he were.

Mr. MAZZOLI. Do your agents find that many of these people are coached, and that they say the same things over and over again—the same sequence?

Ms. SALE. Well, one would arrive at that conclusion after doing 10 interviews, and the answers were exactly the same in the 10 instances.

Mr. MAZZOLI. That is right. So that would further underscore the idea that this is an organized, coached, and preprogrammed kind of an activity. Is it your view that a lot of these people take that work permit, which you give them, and they split the scene never to be seen again, unless you somehow stumble on them or because they commit some criminal act?

[Additional information submitted by Ms. Sale follows:]

The overall no-show rate for aliens in exclusion proceedings nationwide is 30 percent. In New York, from October 1992 to March 1993, the no-show rate for persons placed in exclusion proceedings and then released was 92 percent. Such absconding aliens are not even counted as asylum applicants by the immigration courts, since they never file an asylum request.

Ms. SALE. That certainly has been our impression. Let me just, as a matter of example, tell you about the Office of Immigration Review where immigration judges have hearings on asylum for excludable aliens, for instance, if they skip us and go directly to the judge. Last year of 13,000 asylum cases that they scheduled or put on their docket, 7,000 were no-shows. That is essentially better than a 50-percent no-show rate.

That would lead one to conclude that—well, it is not necessarily that every one of those was a liar. However, it is hard to believe that something is not wrong with this system.

Mr. MAZZOLI. That is exactly true. That is 7,000 no-shows out of about a 13,000, 14,000 or 15,000 audience. Furthermore, of the ones that show, you still have a 30- or 40-percent rejection rate thereafter.

Ms. SALE. That is correct.

Mr. MAZZOLI. This further shows how this system is being used and, I think, abused. I hope we have a second round of questions, because I want to honor the 5-minute rule with my colleagues here.

However, I do want to talk about the criminal aliens, among this population, and also talk about the telephonic exclusion that you are all working with the Executive Office of Immigration Review, and the in absentia type of final orders.

The Chair recognizes the gentleman from Florida.

Mr. McCOLLUM. Thank you very much, Mr. Chairman.

Following up on the chairman's questions on the source of these folks coming through an airport like JFK or any international ter-

minal, I believe in that briefing material, too, was the indication that while they transit to a lot of places, there are really only like three or four cities or countries where they originate. That does not mean they are from those countries.

However, does not the information that you have discerned show that? Could you tell us a little bit about that, Ms. Sale?

Ms. SALE. I would be happy to. I will speak specifically regarding to JFK, since I think that that is, in fact, where we have today the largest concerns.

Of the excludables coming into JFK last year, 26 percent arrived from China, 30 percent arrived from India, and some 16 percent arrived from Pakistan. The remainder represents a broad range of nationalities. However, those are the clusters of countries where we are seeing the largest volumes of people coming in without documentation.

Mr. McCOLLUM. And there are about three or four cities in the world where you believe they have largely originated and may have been coached? Am I correct that they are located in fairly limited areas?

Ms. SALE. It would be fairly consistent with the countries of origin that I have just identified. Whether or not that is city-specific is something that I would like to provide for the record, with further analyses.

Mr. McCOLLUM. I would appreciate it if you would. I believe that some of the briefing materials that I have got would indicate that.

The bottom line is that when these folks get to an airport like JFK and even if they have a fraudulent document in their hand or a visa that is clearly not real and it is not legitimate, and then they say the magic words, then they are released with a work permit. Is that not true?

Ms. SALE. Under our current procedures and regulations, as well as our understanding of the law, sir, yes. The claim to asylum is one that we honor, and we put them in an elaborate administrative review process.

Mr. McCOLLUM. Am I correct that, and I believe the statistics given to me show that, in our international airports over the past 2 years or so, we have had like a 300-percent increase in the number of folks in this category?

Ms. SALE. Yes. We supplied the committee, I believe, in the last couple of days with charts that indicate that growth. The growth has been virtually expeditious in the last 3 years. It does indicate this.

[Additional information submitted by Ms. Sale follows:]

# EXCLUDABLE ALIENS - JFKIA

Jan 1, 1990 thru Dec 31, 1992

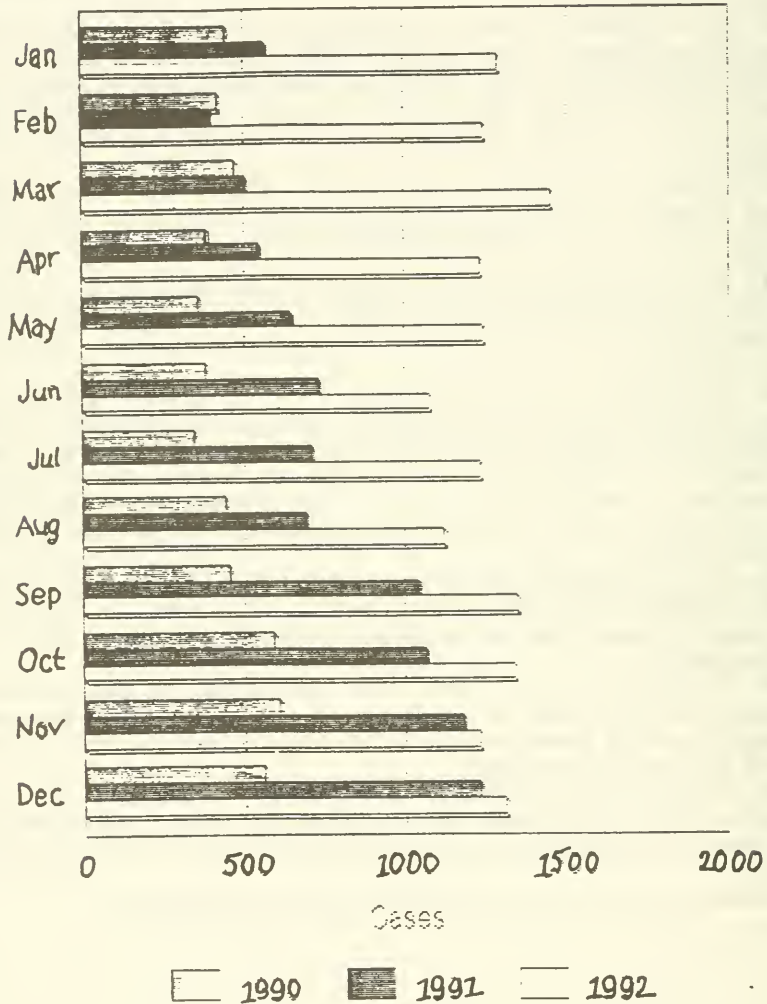


FIGURE I



# INADMISSIBLES JFKIA FIRST QUARTER COMPARISON FY91 THRU FY93

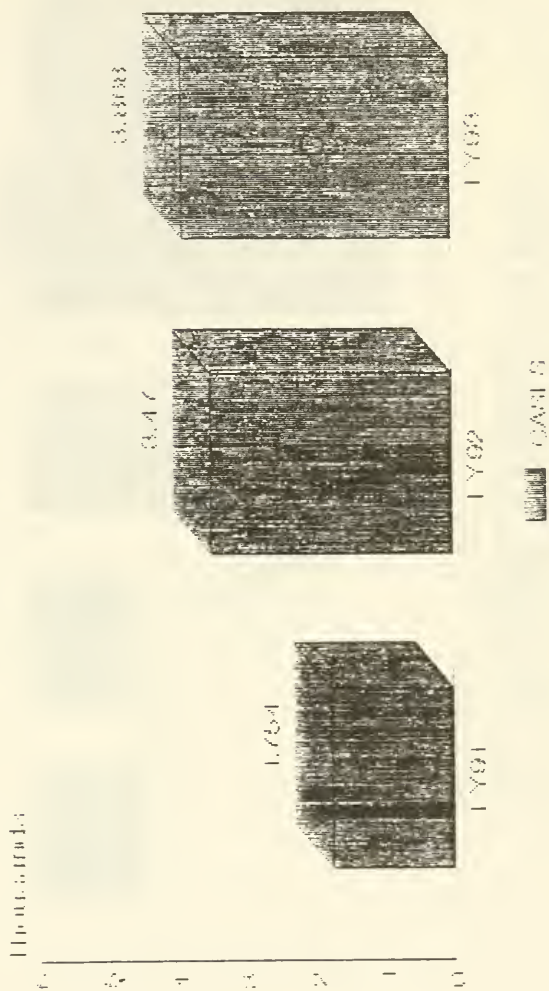
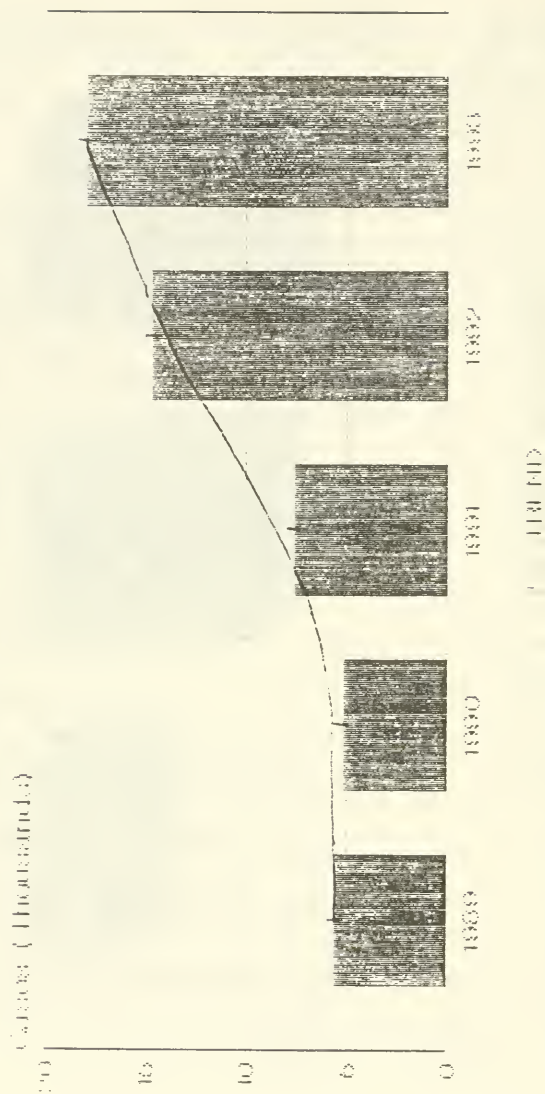


FIGURE 11

INADMISSIBLES JFKIA  
FY89 THRU FY93

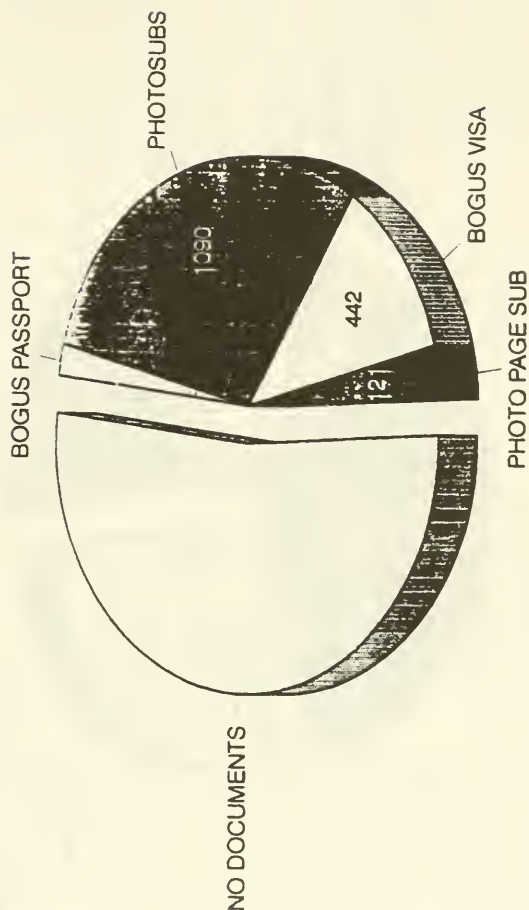
THE UNIVERSITY OF ALABAMA IN BIRMINGHAM  
BIRMINGHAM, ALABAMA 35294-0001

FIGURE 111



# INADMISSIBLES - JFKIA

## MAJOR METHOD OF ENTRY



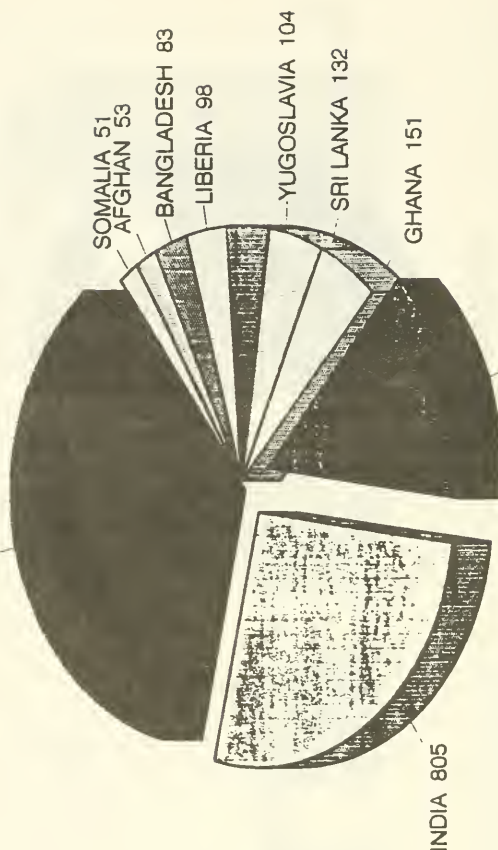
FY93 = (FIRST SIX MONTHS)  
 CHART INCLUDES ASYLUM CLAIMANTS ONLY  
 TOTAL ASYLUM CLAIMS = 3,964

FIGURE IV

# ASYLUM CLAIMS BY NATIONALITY

JFKIA

CHINA 1080



FY93 (FIRST SIX MONTHS)

TOTAL ASYLUM CLAIMS = 3,964

FIGURE V

Mr. MCCOLLUM. Well, I know you have. I just wanted to put it on the record here today with you saying it that this is, indeed, the predicate for a lot of the problems we are trying to address.

I have one last question, at least in the first round, and I certainly hope we do get to take a second one. It has been suggested that we can solve this process in some way by simply speeding up our asylum hearings. I am all for doing that. I think Mr. Mazzoli's bill goes in that direction, and there may be other things we can do.

Is that all that is necessary, Ms. Sales, to simply speed up asylum hearings?

Ms. SALE. Absent a resource constraint, which is an unrealistic assumption, we could throw people and money at the problem until we had enough to be current with the receipts. At that point, perhaps that would reduce it, if we were actually able to make determinations very, very timely, and people got word that the problem would go away.

However, given the current, very laborious, and extensive due process that we go through, coupled by the reality, there just are not enough resources in the system to throw at it, then we need to look at vehicles to expedite our ability to process cases.

Some of those are managerial and within INS's purview. Some of those are regulatory, and we have been consulting with the committee on that.

Others are the kinds of activities that are presently under consideration, which would enable us to screen people overseas before they arrived so that we would be able to slow things down, which would enable us to move people out of the system more rapidly than we are doing so today.

Mr. MCCOLLUM. What you are saying is, in the ideal world with unlimited resources, that it might be possible to make a significant impact through speeding up the process—like more judges, more adjudication officers, et cetera, et cetera. However, you do not have that, and we are not likely with the budget deficits, and so on, to give you unlimited resources. It would take a lot of money, would it not?

Ms. SALE. It would take a lot of money. In particular, it would take a lot of money if we were to consider detaining people so that we would not lose them, as Mr. Mazzoli has so properly defined as a piece of the problem. This is an enormous country. Once somebody has a work permit, we do not have the resources to go seek them out.

Mr. MCCOLLUM. We also do not detain them. We do not have detaining facilities, and we do not have the money to detain them?

Ms. SALE. No, sir.

Mr. MCCOLLUM. Thank you very much.

Thank you, Mr. Chairman.

Mr. MAZZOLI. In that setting, let me just ask you one very brief question before yielding to the gentleman.

Is that new number of bids coming on line at JFK any time soon or are you familiar with that?

Ms. SALE. Yes, sir. We should be coming to closure on that contract this spring. Then there is about a 6-month build-out process, and we are looking forward to that.

The facilities should come on line next winter or spring. We have been in a contractual process. The contract is to close this summer. Then there is a build-out phase, obviously, for it.

Mr. MAZZOLI. Thank you.

The Chair recognizes the gentleman from New York.

Mr. SCHUMER. I have so many questions that I do not know where to start. On that point, isn't it true, though, that you have a facility in L.A. and it has greatly, greatly reduced the number of people seeking the asylum process role, and likely the abusers in L.A.?

Ms. SALE. Yes, sir. Our experience has been that, in fact, when we are able to detain people, that that does send a message.

The problem is that where we had a similar problem to the New York problem, although the numbers were not as large, 2 years ago in L.A., we opened a facility, and the problem moved to New York. My concern, frankly, is we will open the facility in New York, at no small expense to the Government and to the exam's fee providers, and it will move to Chicago or some place else.

Mr. SCHUMER. That probably has some effect on reducing the problem.

Ms. SALE. We see that it has an effect, yes.

Mr. SCHUMER. Let me first thank you for the basic support of the bill that I introduced that you have.

I have a couple of questions. As you know, and I have written the INS again before the World Trade Center bombing about Sheik Rahman, so I have a number of questions about that and lots of people are asking them. I am not going to ask you to talk about anything to do with the ongoing investigation.

Ms. SALE. Thank you.

Mr. SCHUMER. I understand you cannot do that, and now there is a gag rule of some sort about that as well.

Ms. SALE. I appreciate that.

Mr. SCHUMER. However, the first question I have is it was reported last week that we know how Rahman came here now, and we know that he claimed asylum after the INS caught up with him. Then the 2-year process worked its way.

However, it is also reported that he left the country and went to Canada. It was a report in, I think, Saturday or Sunday's New York Times. It was reported that while he was under the asylum claim, he went and left to Canada. Yet, the INS let him right back in.

Can you comment on the specifics of that? Is there any check made? I mean, he was still on the terrorism list. The irony is, you had proceedings against him. Maybe you were tearing your hair out quietly. I was tearing my hair out, as well, about this.

Mr. MAZZOLI. You did a better job.

Mr. SCHUMER. Yes, I did a better job.

[Laughter.]

Mr. SCHUMER. Yet, there he gives you a golden opportunity. That is because once someone, by definition, leaves the country, their asylum rights are gone. What happened?

Ms. SALE. Well, we are aware of the allegations, sir. We have not been able to confirm that he did leave and came back in. We have

been asking Canadian authorities. Our data bases do not show evidence that he left and came in—not yet.

Mr. SCHUMER. Well, let us say that there was someone like Rahman, on a terrorist list, that was let into the country by mistake. Someone from the State Department testified before my subcommittee that the name was spelled wrong, and that is how he got in. That was not very reassuring. He then claims asylum and leaves the country.

Is there then a system or is there a process by which he would be checked coming back in, let's say if it is Canada or Mexico?

Ms. SALE. On the land ports, we do both visual inspections at bridges and roads, as I am sure you have seen, Mr. Schumer. Also, if a person appears to require a reference to secondary inspection, we will refer them to secondary inspection. At that point in many, many places, we do have access to the IBIS and other electronic lookout systems where we will process the person.

Generally, our rule is that if they are from noncontiguous countries—if it is a German coming across the Mexican border, as an example—we will, in fact, as a matter of routine, refer them to secondary, and go through a process to make sure that we know where they are going and that they have a right to be there.

Mr. SCHUMER. Right. I would just ask if you would submit in writing to me within a week if on this IBIS system, Rahman's name appeared at the time he was alleged to go out of the country and come back. That would be a good way to check on whether the system was working. That is an abstract question.

Ms. SALE. Yes, sir.

Mr. SCHUMER. OK.

Ms. SALE. We will submit that.

Mr. SCHUMER. Thank you.

[Additional information submitted by Ms. Sale follows:]



Sheik Rahman's name has been in both the INS and Interagency Border Inspections System (IBIS) lookout systems since 12/10/90. We have no evidence that Mr. Rahman travelled to Canada last year and then returned to the United States. Our computer data system for nonimmigrants (NIIS), does not contain a record of admission for Rahman from 1992 or 1993.

All persons entering the United States through ports-of-entry are inspected. With few exceptions, all ports-of-entry have access to IBIS for primary inspection of persons seeking entry in vehicles. All vehicles' license plates are queried in IBIS. In addition, name queries may be performed during primary inspection at the discretion of the inspector. With the exception of Canadians and lawful permanent residents, most aliens are referred to secondary inspection for completion of the necessary immigration documents by which their presence in the United States is tracked. In secondary inspection, their names are queried in either the INS lookout system (a hard copy lookout book) or the IBIS lookout system.

It is remotely possible that Rahman crossed the border presenting high quality, fraudulent documentation -- such as a counterfeit alien registration card or passport -- in another name. If the fraud was undetected, he could have escaped detection at the port-of-entry without a query to IBIS.

If Rahman had been encountered at the border and had been admitted to Canada, he would have forfeited his asylum request. Upon seeking re-entry, he could have requested a new exclusion proceeding, although the Service would have required him to wait in Canada until the date of his hearing.



Mr. SCHUMER. My next question is for the State Department folks. Are you still going to oppose my bill?

Mr. WARD. Congressman Schumer, a little over a year ago, the State Department supported the Department of Justice and the Immigration Service in attempting to establish preinspection in London.

Mr. SCHUMER. Which has not been set up yet.

Mr. WARD. Several things, sir, have happened since then. One, as you pointed out, all of our efforts have been unsuccessful to date. One of the prime reasons we did support establishment of preinspection in London is because we felt that at least we would get some answers to many of the questions we have about the concept. That is one issue.

The second issue is that we have found through our participation with INS and the carrier consultant program and through similar programs that we run of our own, where we go in temporarily to airports in various cities and target departing passengers, trained immigration personnel, et cetera, that it only takes the organized systems that exist for alien smuggling about a week to figure out that we are there. Then they simply go somewhere else.

So, we are again faced with how effective a law enforcement or deterrent it is when we cannot go everywhere in the world.

Mr. SCHUMER. Well, Mr. Ward, I object to that kind of reasoning. Mr. Sale appropriately stated that if we would not have the resources to just keep the present system and have all the hearing officers here, even without the problem Mr. Mazzoli brought up and which has been obvious, and that is, more than half the people never show up for the hearing again anyway when they are here.

However, to establish preinspection in, say, 50 countries, using the same number of people, is not an insurmountable financial burden by any stretch of the imagination.

I just find the answers that I received from the State Department on this, in my judgment, not to appreciate the problem we have here. That is not just the problem with terrorism and that kind of danger, but the problem that the law is being flaunted.

Mr. MAZZOLI. We will have a second round, but go ahead and answer the gentleman's question.

Mr. WARD. If I could just finish that. First of all, let me assure you that we do appreciate the problem. I work with immigration issues every day, and I am very much aware of what is going on. This is why, as members of this panel know, I was up here 2 year's ago pushing for summary exclusion, as just as an example.

Getting back to the cost issue, again, all I am saying is that these are things that have developed in the last year that we think need to be considered. For example, the initial estimate in July 1991 for London was 60 inspectors and an annualized cost of about \$1.8 million.

Mr. SCHUMER. Right.

Mr. WARD. We are now at 124 inspectors, and the annualized cost is estimated between \$12 and \$15 million. We just think that needs to be considered in the process.

Mr. SCHUMER. Mr. Ward, by definition, if they shifted places, you could shift things. You might lag a couple of weeks, but you could shift the inspectors, as well.

Mr. MAZZOLI. We will get back to you. I hate to interrupt, but we will have a second round.

I recognize the gentleman from California, Mr. Gallegly.

Mr. GALLEGLY. Thank you very much, Mr. Chairman.

Mr. Chairman, first of all, I apologize for coming in a little late. I just got in from California.

Mr. MAZZOLI. Well, I think I saw Xavier carrying his suits in, also. So, I think, maybe he may have just gotten off the airplane, also. That is a California trait.

Mr. GALLEGLY. You bet.

In any event, I did have an opening statement, but I would like to enter it into the record with unanimous consent.

Mr. MAZZOLI. It is so ordered.

[The prepared statement of Mr. Gallegly follows:]

## Opening Statement of Representative Elton Gallegly

Mr. Chairman, I wish to thank Chairman Mazzoli for holding these hearings on a subject of growing concern and alarm to our citizens--the ability of undocumented aliens to enter into our country illegally through our international airports and other ports of entry, merely by requesting asylum and claiming the threat of persecution should they be forced to return to their homelands.

I hope that members of this subcommittee and our witnesses saw the recent "60 Minutes" documentary--or watched the clip from that program which my office circulated--showing how undocumented or falsely documented aliens caught by INS officials at JFK Airport routinely request asylum immediately, claiming they will be persecuted or killed should they be forced to return to their native countries. Because the INS does not have sufficient detention facilities available near the airport, the aliens are released into the city, and provided temporary work permits, pending a hearing on their claim for asylum. Whether they are ever seen or heard from again is unknown. Maybe 20 percent actually show up for their hearing. Most of them disappear into the night, in order to find employment and a place to hide out and escape detection by the INS, which lacks the manpower or means to keep tabs on them, and so remain indefinitely in the good old USA. And the INS agents are left hoping, as we all hope, that these illegal aliens are just ordinary men and women seeking a better life, and not gangsters or drug pushers or terrorists bent on murder and destruction.

The recent bombing at the World Trade Center and the random shootings outside the CIA are among the tragedies that have ensued as a consequence of our lax policy regarding illegal aliens and aliens claiming asylum. Taken together with the mounting statistics involving the millions of aliens who are allowed to enter our country illegally each year, adding to the financial burden of our states and local governments, who steal jobs, services and benefits from our poor and needy citizens and legal immigrants and their families, these recent stories of criminal atrocities committed by illegal aliens show clearly that our immigration policies must be reexamined and revised. Judging from the correspondence I have received from my own constituents and from citizens all over this country, as a consequence of the package of bills I have introduced to address this problem, and based on the polls and surveys I have read taken among all representative groups throughout the United States, the American people are demanding action by the Congress and this Administration.

Mr. Chairman, I sincerely hope that this hearing on the asylum issue, and on the excellent McCollum bill, the Schumer bill and your own fine proposals, mark a beginning toward enactment of sound legislative reform of our immigration policies. I look forward to today's proceedings with considerable interest.

Mr. GALLEGLY. I would just ask a couple of questions, if I might.

Ms. Sale, we have seen in recent days a higher profile on those entering the United States at the airports, largely due to the tragedy in New York City. In fact, we have seen a couple of television segments and news reports on this issue of political asylum.

Needless to say, Kennedy Airport is not the only place in the United States where we have problems with people illegally entering the United States.

Ms. SALE. That is correct.

Mr. GALLEGLY. I meet on a regular basis with our Border Patrol folks in San Diego—the San Ysidro crossing in southern California, not far from where my home is.

According to the numbers that they give me on a daily basis—we are not talking about weekly, monthly, or yearly—but on a daily basis, we have an average of 5,000 people crossing that 7-mile strip of U.S. border illegally every day of the week, every month of the year. In the best case scenario, we are interdicting or detaining approximately one out of three. Are those numbers fairly consistent with what you understand to be true?

Ms. SALE. Well, our apprehensions this year for the Border Patrol are running about on mark with last year. We expect at the end of the year, we will again have of 1.1 to 1.2 million apprehensions.

The numbers of how many come across that we do not catch are, as you know, very, very speculative. It is something that we all struggle to deal with. I think the broader concern not only is it how many come across that we do not catch, but how many of them go home every night, as well, because they do not all necessarily come to stay. They come for business or pleasure or family or other activities, and do not necessarily stay.

I cannot tell you that it is one out of three that we apprehend or it is one out of two, but it is one of those two numbers, to the best of our estimation.

Mr. GALLEGLY. Well, I am only basing those numbers on statements that I have had from people that have worked there—administrators, supervisors. There seems to be a unanimous consensus by those who are working that particular venue that that has been and continues to be the case.

There has been a little change in the profile of those illegally entering the country. For a long period of time, we had a fairly significant number from Central America, Nicaragua, El Salvador, Honduras, and so on. However, according to the numbers that have been given to me in the last couple of months, approximately 98 percent of those that are currently crossing at San Diego, appear to be Mexican nationals.

Now, having said that, if we take a step back and we see what is happening at our international airports regarding illegal immigrants coming into this country. Certainly, I would hope we have a little more sophisticated method of interdicting those who are illegally entering our country than maybe some of the other countries around the world, with perhaps, Mexico, as an example.

Have we done any tracking to see how many may be coming in from the countries that you mentioned—Pakistan, China, India—into Mexico and then working their way in? Let's face it, let's be



real honest. It is not difficult to cross the international border in San Diego, virtually unchecked. The back door is not ajar. It is off the hinges.

Now that being the case, what would preclude real hardcore international terrorists from entering into, let's say Mexico, and crossing the border at San Diego or San Ysidro rather than trying to get through at Kennedy?

Ms. SALE. That is actually a vital and very real concern of ours. It is one that, I think, would we to be successful with Mc. McCollum and Mr. Schumer and others, that would become the next front, as it were, for not just illegal migration of the working poor out of Mexico and the like, but organized smuggling that we have seen.

We do keep track of what we call other than Mexican entrants, sir. I do not have the numbers with me by country of origin, but we could certainly provide those for the record.

[Additional information submitted by Ms. Sale follows:

#### APPREHENSIONS BY COUNTRY OF CITIZENSHIP

[October–March, FY 1993, San Diego, California Border Patrol Sector]

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Country:	
Mexico .....	243,274
El Salvador .....	973
Guatemala .....	420
Honduras .....	201
China .....	58
Philippines .....	11
Costa Rica .....	11
Nicaragua .....	16
Brazil .....	26
Ecuador .....	25
Peru .....	12
All other nationalities .....	78
Total .....	245,105

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NOTE.—The San Ysidro, California port-of-entry does not track inspection of visiting aliens by nationality

Ms. SALE. We have had several instances recently of PRC's, as an example, being caught at checkpoints, coming, in vans—50 and 60 of them packed into a van—and then driving through en route to the United States.

Whether they have landed in Mexico or south of Mexico, it is very hard for us to ascertain, because they do not have documents. They are certainly not necessarily going to give us the privilege of a dissertation on their route.

We have, working through the Department of State and with the indulgence of the Appropriations Committee, worked very, very diligently with the Mexican Government to try to both facilitate their financing repatriation of illegal aliens or people that they encounter coming into Mexico that clearly are trying to get here. That is, I think, a very important and impressive program that we work with them on.

We also do work with Mexican officials on a regular basis at their airports, as well as at the border, to try to facilitate, just as we do carrier consultant and other of those activities in other for-

eign countries. They are working with us to provide some assurance of that problem.

Mr. GALLEGLY. Thank you.

Mr. MAZZOLI. The gentleman's time has expired. I recognize the gentleman from Texas.

Mr. BRYANT. Thank you, Mr. Chairman.

I would like to ask, is there a political appointee of the Clinton administration in the room?

[No response.]

Mr. BRYANT. I would just like to generally suggest that 5 months after the election, it is time we had hearings not with acting commissioners and directors and secretaries, but with the actual appointees. As far as I am concerned, they can appoint you, and let's confirm you, and let you run the agency. Let's get on with running the agency.

Mr. MAZZOLI. I think so, too. I would not be averse to that idea at all.

Mr. BRYANT. Would you raise your right hand?

Mr. MAZZOLI. Let's do it right now. We will tell Ms. Reno later.

[Laughter.]

Mr. BRYANT. Ms. Sale, you were asked some questions a moment ago, and your answer was that most of these people were coming through India, China, and Pakistan, I think. Did I get that correct? I mean, they are beginning there and traveling through other countries, and then coming here. Isn't that correct?

Ms. SALE. Yes, sir.

Mr. BRYANT. Well, are these people arriving on the east coast of the United States or are you talking about on both coasts?

Ms. SALE. The numbers I was referring to are principally from the New York Airport interdiction activity, where we are today seeing the largest number of undocumented air travelers into the United States.

Mr. BRYANT. I wonder why they are not stopping and staying in Europe? Why are they crossing the ocean and coming all the way here?

Ms. SALE. Some do, sir. Some candidates in our asylum program will, for instance, have come in having spent 2 or 3 years in Europe. I do not have that kind of data to provide you; however, some do. Once they are here, we then made an adjudication based on their country of origin, not on their last country of departure.

Mr. BRYANT. Why are they leaving? I mean, are the laws different there? Are they being forced out of there or did they just decide they like it better here?

Ms. SALE. I think we have the privilege of living in the best country in the world.

Mr. BRYANT. Well, how do they stay in those countries? Do those countries have no laws either that can be enforced to stop them from coming in?

Ms. SALE. I think it varies across the board. I think in Europe these days, the concerns of immigration are extraordinarily heightened. Germany, in particular, I think, is second to the United States in numbers of asylum applicants. They are all now concerned with those issues.



Mr. BRYANT. You mentioned a moment ago that if a non-Mexican crosses the Mexican border into the United States, you might have a few more questions or that might also be the case if someone is coming from Canada.

I have not crossed the border into Canada for many years, but I have crossed the border into Mexico several times a year. I have never been asked anything. Just how are you doing that?

Ms. SALE. We routinely check the license plate of the automobile that you are in. That is virtually a 100-percent check, which we and Custom Service's officers acting as our agents, do via a computer, as cars come across ports of entry.

The inspectors have the authority to then exercise both intuitive judgment, as well as personal experience, in stopping people and questioning them. You may have been among the lucky that has not had any reason to be asked.

However, I have stood and watched the work both on the Canadian border and on the Mexican border in this last year. Cars get stopped and questions are asked.

Mr. BRYANT. Are these white people—European-looking people?

Ms. SALE. Yes, sir, European-looking people.

Mr. BRYANT. I do not wish to slow down travel back and forth across the border, being from Texas.

Ms. SALE. Nor do we.

Mr. BRYANT. I know you do not either. However, I have never been asked once in my entire life. I was born and raised in Texas, and crossed that border 1,000 times. Never have I been asked.

Mr. SCHUMER. Texans always get special treatment.

Mr. BRYANT. I do not think they had any way of knowing I was from Texas. I have been in cars that did not belong to me, in rented cars.

I do not know that you need to change that, but it does not appear to me that there is any kind of a check, at least crossing the border from Mexico. If it is the same in Canada, it looks like a pretty easy way to come into the country.

Ms. SALE. Well, the system is clearly not perfect, sir. However, we would be happy to provide for the record any kind of data that would help you at least get some assurance that there are referrals to secondary, and that there are instances of secondary review, and what results we have of those by nationality, which I think would give you some comfort.

It is clear, for instance, in El Paso, that on the Mexican side, there are many, many blonde, blue-eyed German descendants who do not speak English or German, and they are routinely stopped and checked. The staffs at our ports of entry know the populations that they are working with, and develop a second sense. That is paramount to none, in terms of making judgments during the inspection process.

Mr. MAZZOLI. The gentleman's time has expired. I now recognize the gentleman from Illinois.

Mr. SANGMEISTER. Knowing that this hearing was coming up, I had met with, in my district office back home, a number of people who are concerned about and work in the area of immigration. Politely, I think they were telling me that maybe there's a little hysteria here, and that the whole problem is at JFK. It is not through-

out the Nation. We ought to be addressing the problem there, and not be going into a vast change of our laws.

I guess the question is, is JFK just being used by the so-called smugglers as the airport where it is easiest to get done, or could this easily be moved to Los Angeles or Seattle or any other of our points of entry?

Ms. SALE. It is clear, from our experience, that the preferred point of destination or landing has moved from Los Angeles, when we opened a detention facility in Los Angeles, and worked at exercising that deterrent, about 2 years ago, to JFK. I think in all likelihood, given air transportation patterns, that major international airports are going to be more susceptible as long as air transfer is one of the preferred ways of getting here.

I think there is a real concern, and Mr. Gallegly raised it. That is, if we were able to shut off all of the holes, as it were, in airports, then we would then see a change in what is happening at the land borders. We have not seen that yet.

It may have, from a smuggler's point of view, something to do with the fact that it is easier and cheaper to move people by air than by ship or truck. It takes less time. It is less difficult. However, those are only speculative on my part.

Mr. SANGMEISTER. So, if I understand you correctly then, if we were to try to do something internally through the Service to correct the situation at JFK, and we are successful in doing that, it would only be the same situation at another port of entry?

Ms. SALE. Yes, sir. My sense of it is that we need a systemic solution that would apply at all ports of entry, and not just to be pouring money at any one airport.

Someone has just handed me our statistics for what we call mala fide candidates coming through airports—people without documents. This says 32,000, but I remember a different number. This is in 1991.

In 1991, there were 13,383 in New York, 2,743 in Miami, and 10,504 in Los Angeles. That number would not be the case today, I do not think. It is 2,730 in San Francisco, 1,170 in Houston. The numbers vary.

So, if we had the same data for this last quarter, I think you would see a bigger number in New York, and a smaller number in Los Angeles. It will shift as we bring additional detention space in New York.

Mr. SANGMEISTER. You mentioned that the showup rate is about 50 percent. What would happen if a 100-percent all showed up for their hearings? Are you prepared to handle that?

Ms. SALE. No, sir. I mean, we will handle it over time, but it will take a long time. In the meantime, while people are waiting to be heard, they enjoy the benefit of being in the United States with everything that that entails.

Mr. SANGMEISTER. It also, puts the Service in the position of kind of hoping that everybody does not show up, if you cannot handle it. It is not that you hope for that, and I understand that. But that is a reality, is it not? I mean, if everybody showed up on a certain morning, you would all throw up your hands.

What about Congressman Schumer's bill, you seem to be, if I understand your testimony correctly, favoring that type of an ap-

proach. Of course, maybe the question is best first directed to the sponsor or to the State Department.

What is going to give us the authority to set up in foreign countries these inspection areas at all these different airports? I mean, do we have treaties in force that will allow that to happen or do we have good relationships with those countries that they are going to say, well, we welcome you to put in that kind of a screening device?

Mr. WARD. Actually, it requires a little of both, Congressman Sangmeister. It requires, of course, the country to be willing to do it. Then, second, we enter into a bilateral agreement with that country, as we have, for example, with Canada, where we have 6 to 10 preinspection preclearance stations now. So, it is a country by country process.

That is one of the problems with the U.K. that we have not been able to get the satisfactory agreement with the U.K. Government, and with the corporation that runs the airport, which is another issue.

Mr. MAZZOLI. The gentleman's time has expired. Do you have a followup, George?

Mr. SANGMEISTER. Well, I have just one quick one. Again, these people whom I was speaking with yesterday are concerned about the Schumer approach on the basis that there will be no hearing. There is going to be possibly some training; although, that is questionable.

They will be taking the trained person and one individual, with no hearing, and they are going to look at this person, talk to him, and say, "No, you do not qualify." Do you have any thoughts on that?

Ms. SALE. We have worked very, very diligently and built an asylum officer corps in these last 18 to 20 months, actually, that has received favorable reviews from the refugee advocacy community, both in terms of its training, its expertise, and its availability to country condition information. That corps handled the review of people under the Haitian migration program in Guantanamo, and did so, in our opinion, with fairness and sensitivity to those cases.

We similarly have built a corps of legal staff who are doing reviews of that nature with people that we have in detention for exclusion purposes. We would argue that we have a model in place that has proven itself that would enable us to put specially trained officers onsite to exercise the kind of authority Mr. Schumer proposes.

Mr. MAZZOLI. The Chair recognizes the gentleman from California.

Mr. BECERRA. Thank you, Mr. Chairman. Thank you, all of you, for your testimony so far.

Ms. Sale, you mentioned that there is, of course, always the problem of resources to provide the personnel necessary to process all the cases of asylum, and you mentioned there is a need to look at other vehicles to expedite the process.

Given what you have also said about the Los Angeles situation where extra detention spaces has seemed to have relieved part of that problem, and actually caused some individuals to seek asylum through the New York facility, please answer two questions for me.



One is, does not L.A. prove that, in fact, further resources for detention and perhaps processing helps take care of the problem? Two, what vehicles are you talking about if you cannot just do it by detention and beefing up your personnel?

Ms. SALE. We need to address the issue, in my view, Mr. Becerra, on a very holistic basis. We need to both look at our ability to handle inspection activities through preinspection program opportunities overseas, and through a continuation of the carrier consultant programs that we have properly exercised in countries that are willing to work with us.

Our overseas' district offices work very, very closely with host country governments to facilitate using their authorities locally, both in the identification and preclusion of people coming to the State with fraudulent documents, and in working on ring activities where we are able to share information and work collectively on those issues.

Once people arrive stateside, a vast panoply of opportunities kicks in such as exclusion and then asylum hearings and considerations. We have a system in place that allows a candidate, depending on the circumstances, to exercise not just two, but possibly four or five bites at the apple, with a complete review in every instance.

We also have, in an effort to try to provide the best possible rigor in the process that we build, extraordinary requirements for documentation in casework that we handle, which burdens the system and makes processing of any single asylum claim today to take upwards of 5 hours of officers' staff time. That is an enormous, enormous resource burden on this country.

It is an enormous resource burden on people who are paying examines fees in order to get through the regular immigration system. They are, in fact, carrying, to a great extent, the cost of the asylum process by virtue of those fees.

We have an obligation to the public at large, as well as to the people who are paying the fees, to see to it that our process is efficient and effective, both from a fiduciary standpoint, but just as importantly, because it is not fair to the bona fide candidate—to the person who really has suffered persecution and who is really living with the threat of life, to have to wait an untenable period of time while the queue is filled up with people who have frivolous or unwarranted claims. We owe every one of those people today the exact same opportunity.

Mr. BECERRA. Would the INS, with you as Acting Commissioner at this stage, be willing to look into the possibility of undercutting certain procedural rights that are granted to asylum applicants at this stage?

Ms. SALE. We have been conducting two reviews simultaneously. I have asked and have been indulged by the Department of Justice's management staff for a very, very comprehensive management review of all of the asylum application operations as they are currently established.

That is, to look at those places where we can benefit from procedures that are in place for the broader adjudication process to move paper more quickly, both in terms of computerization, in terms of infrastructure in the agency, in terms of staffing, in terms of the rigor with which we do business.

We have simultaneously also engaged in a consultation with interested parties representing both the immigration lawyer community, as well as representatives of people filing for asylum, to talk about what options we might have to review the way the system is now designed to see if there are not ways that we can come to agreement on what things we can do to expedite that process. Both of those activities are on going and are not finished.

Mr. BECERRA. I would just like to ask a quick followup question.

Mr. MAZZOLI. Yes.

Mr. BECERRA. I am not certain if you gave me a direct answer as to whether or not there would be any diminishing of procedural rights. However, would you say that you are going to take a close look at perhaps diminishing certain rights? Would you consider, for example, the right or the standard that is used at this stage for a finding of persecution as something that would be under consideration?

Ms. SALE. What I have been dealing with, sir, are those things that are available to me as a matter of either regulatory or managerial change. I have not been considering changes to statute. Those are your venue. At that point, I have not presumed that I would make those kinds of recommendations, independent of policy process.

Mr. BECERRA. Thank you.

Mr. MAZZOLI. The Chair recognizes the gentleman from New York.

Mr. NADLER. Thank you, Mr. Chairman.

Ms. Sale, first of all, when someone applies for asylum and you do not have the facilities right away for a hearing or whatever, you give them a temporary permit and a work permit?

Ms. SALE. Yes, sir.

Mr. NADLER. Are those work permits of indefinite duration?

Ms. SALE. No, sir. They are good for a year.

Mr. NADLER. You have testified as to the great amount of no-shows. If you made those work permits good for 3 months or 6 months, so that they had to check back in with the INS, might you have a fewer instances of wrong addresses on your computers, and more instances of people showing up?

Ms. SALE. The work permit is valuable to people in the United States in order to get work. The language in the Sanctions Act also provides a person to prove that they can get work or that they can work in the United States by use of a Social Security card, a driver's license, birth certificate, and numerous other documents.

If you have a work permit for a day, you can use it to get a Social Security card and a driver's license. You never have to come back to INS, sir, the way the language is currently written.

Mr. NADLER. Second, much of the attention, of course, is focused on the JFK issue, for obvious reasons. On the "60 Minutes" program, that everyone has referred to, the regional INS Commissioner, Mr. Slattery, indicated that the detention space at JFK was completely full. Therefore, anyone claiming asylum who arrived with no documents, or with false documents, would have to be let out onto the streets of New York.

I am aware, however, that a large number of Haitian asylum-seekers who arrived in Florida were sent to INS detention centers

in Texas and Louisiana, because the Miami detention space was all full.

Could you explain why the INS can find detention space for Haitians all over the country when detention space in Miami is full, but apparently no effort whatsoever is made to find detention space elsewhere outside of New York for arrivals at JFK?

Ms. SALE. We manage detention space in an enormously complex and convoluted process, Mr. Nadler. That includes moving people from New York, for instance, to Denver where we do have space, and where we do take advantage of those opportunities.

Detention space is managed both as a function of the kind of money we have to spend on it—user fee money, only for those cases that are excludable, appropriated money for all other cases, and principally, frankly, for criminal aliens.

We do, on a very extraordinary basis, move people all around the country. We move Haitians to Texas. We move people from New York to Denver. We move people from California to Phoenix. Then, we deal with courts who are unhappy with us, because we have changed the jurisdiction of the person and there is a language problem. There is an absence of translators.

Those decisions are, to a great extent, ruled by a policy document that Immigration issued several years ago on who gets detained and why. However, more importantly, they are ruled by judgments on availability of resources on a day-to-day basis.

Mr. NADLER. Thank you. We will pursue that more later. A number of the bills and a lot of the discussion have focused on summary exclusion of aliens who are claiming asylum, who arrived with invalid passports or invalid documents or no documents. I want to read an example in an actual case history, and then ask a question about it. This gentleman will be remain nameless.

"A national of Iran entered the United States through Seattle in August 1991 with invalid documentation. He was placed in exclusion proceedings, and held in detention until he was granted political asylum a few months later. He was not a member of an opposition group in Iran, but he did oppose the current Government's practices.

"He provided his apartment as a safe house where members of the political opposition could hide from the extraordinary human rights abuses that they faced if arrested. The authorities arrested one of those that he hid. After the presumed torture of this individual, members of the security police came looking for the person, who later got asylum.

"When they did not find him, they arrested his father. They held him for 2½ months, tortured him, and interrogated him until they were convinced that he knew nothing of his son's actions. This individual, the person who sought asylum, was then served with a summons from the Islamic Revolutionary Court.

"He then went into hiding, and left for the United States through Turkey. Despite the fact that he had a copy of his arrest warrant from the Islamic Court, the INS opposed the asylum, and even prepared to appeal his case after the immigration judge had granted it."

Many refugees obviously cannot, by definition, obtain exit or other documents from the governments that persecute them. Imag-



ine, for a moment, Jewish refugees just arriving from Nazi Germany in the 1930's, who could not possibly obtain valid documents from Nazi Germany, or other refugees from Stalin's Russia or from Mao's China or from terrorist Haiti today.

Do you think that we would be serving our traditions of providing asylum to genuine refugees from tyrannical states who have a real fear of persecution, if we had a summary proceeding for anybody who came with invalid documents or no documents?

Ms. SALE. The way that the provisions for summary exclusion or expedited exclusions are currently drafted?

Mr. NADLER. Excuse me. I am talking about the bills we are talking about today.

Ms. SALE. The proposed bill calls for both exceptions for asylum cases and calls for specially trained immigration officers that would handle those activities. In my written testimony, we have opened the door to discuss and consider whether or not there ought to be some sort of a supervisory review or opportunity.

To address your concerns, sir, we are very vitally concerned, not just about making sure that whatever gets passed would meet a constitutional test, but more importantly, that it go an extra measure to ensure that a bona fide candidate for asylum does not suffer the consequences of inadvertently being sent home.

I cannot speak to the case that you have so eloquently described, personally. If you said the dates of it, I missed them. We now have, in fact, this asylum program—

Mr. NADLER. He entered in Seattle in August 1991.

Ms. SALE. August 1991? That may have been before we began the asylum program review process that is giving people, who are being held in detention under asylum or exclusion proceedings, an opportunity for a credible fear interview. We have been slowly building that program on a district-by-district basis. Thus, frankly, we have made decisions about where we put the program based on volume.

I do not know that Seattle would have been one where that process was in place in August 1991. I suspect not. Today, I would hope to believe that the person first, would not be detained for an extended period of time; and second, that once we had an immigration judge's decision, that we would probably not use our resources to appeal.

Mr. MAZZOLI. The gentleman's time has expired. I appreciate it. We will take a second round here.

Let me make just a couple of comments. Thank you all for your testimony. I think it has been excellent this morning.

Ms. Sale, let me address this. I think I got your phrase down correctly. I think it is excellent, because it tends to frame this issue. You talk about laboriously extensive due process.

I think you can have laboriously extensive due process and you can have due process. I think what we have in the asylum law is laboriously extensive due process. However, to answer the gentleman from California, Mr. Becerra, you can still have due process without changing the terminology.

I think that that is really what we are striving to do. I believe that maybe before Mr. Nadler came this morning, you did say that you had some concern about one aspect of the gentleman from Flor-

ida's bill, dealing with the most summary aspect or most summary aspect of this. However, I will let him talk to that point. However, I believe that under his bill, any time a person says the magic word of "asylum," they immediately go to someone who is trained for that purpose.

Ms. SALE. That is exactly right.

Mr. MAZZOLI. So getting back at what Mr. Nadler was saying, people from Nazi Germany or from Mao's China, would go before a trained person, not just the first one he sees walking off the airplane.

Let me go back to what also Mr. Becerra was saying or you were addressing managerial changes. Let me refer to what Mr. Slattery talked about in his statement. Maybe you can explain that.

There is a telephonic exclusion hearing. Somehow you plug in with the Executive Office of Immigration Review, in a telephonic way, to do these hearings that have to do with people in detention, which speeds the process along. It keeps you from having to transfer them to Denver or to Miami. Could you explain that briefly, and how prevalent is that?

Ms. SALE. I am going to assume that I know what Mr. Slattery was speaking to, specifically. In places such as, for example, San Juan, PR, we do not have a permanent resident judge, and we have, essentially, a circuit rider on the part of the judge. We have been, in fact, working with our detention facilities.

Then there are those instances where we are dealing with criminal aliens, which is not the subject of the hearing, but the technology is the same, where we have worked to establish essentially telephonic hearings where you would hold a teleconference. This is like if you were holding a staff meeting with your staff, and you were here and they were across the country.

Mr. MAZZOLI. Which we do often.

Ms. SALE. We would provide for translators and all the other appropriate recordkeeping and procedural requirements. However, we do try to be more efficient in how we handle those procedures by using telephone systems, and have, in fact, been looking into video teleconferencing, as well, for that purpose.

Mr. MAZZOLI. That was probably my next question, which takes it one step further into the technology. That is because you now do have those available.

Ms. SALE. That is right.

Mr. MAZZOLI. The other thing, which I say also matches up with what you use as the term to move paper better. However, then you put as a subset to paper, the computerization. You sort of put under the overall paperwork, any way to deal with the record.

The second thing Mr. Slattery talked about is, in absentia, final orders for those people who fail to show, but have fingerprints and documentation. That is, if you are familiar with that. It is where matters are scheduled, and they fail to show up, but everything is done ahead of time. It gives you an opportunity to keep this thing from just being continued and continued.

Ms. SALE. That is exactly right. The immigration judges have a resource problem, as do we. I mean, the whole system is overwhelmed by the number of candidates in the system, and it affects our ability to move them in a timely manner.

We have been working with them, both on trying to expedite our ability for computer interfaces on their docket control, and to provide them with information so that when a no-show occurs, we can actually go ahead and develop some procedures, from a judicial standpoint, and move the process along. Otherwise, you begin *de novo* every time.

Mr. MAZZOLI. Well, this is interesting. At one other point in your testimony, you talked about this in response to one of my colleagues. I think it might have been the gentleman from Illinois, who was talking about just dealing with JFK, as some of his counselors might say, is what is needed.

You rejoined by saying that there are these systemic solutions throughout the whole system. I think this is exactly where this telephone fits in, in *absentia* judgments. That is when you are fingerprinted and have photographs taken, and those are recorded, and all of the space-age technology that we have available.

Therefore, I would certainly urge you to continue. I hope that, if you are not going to be the Commissioner, that you stay in the Department, because you handle the duties admirably. I must say, today, you knew your turf very well.

Ms. SALE. Thank you very much, Mr. Chairman.

Mr. MAZZOLI. Maybe continuing these movements, along with changes like the gentleman from Florida, the gentleman from New York, and myself, suggest with proper modification, but with a managerial movement, would be really, I think, in the right direction.

Ms. SALE. Mr. Chairman, if you will indulge me for a moment. I think it is important for me to let the whole subcommittee know that there is, in fact, established under the auspices of White House consolidated working groups, an interagency group that the State Department works on, that we work on, and various other Federal agencies are involved in. This whole panoply of issues are being addressed in that context, as well.

Mr. MAZZOLI. Good. Well, I wish you well. I think it would be very helpful.

Ms. SALE. Thank you.

Mr. MAZZOLI. The Chair recognizes the gentleman from Florida.

Mr. MCCOLLUM. Thank you very much, Mr. Chairman.

Just as a point of clarification, first, I certainly welcome any criticism, technical amendments, changes, and suggestions that you have.

Ms. SALE. Thank you, Mr. McCollum.

Mr. MCCOLLUM. If I did not say that earlier, I want to say it now.

Second, it sounds to me like from what you said earlier, and what I read from the testimony, and what you said in response to Mr. Nadler and Mr. Mazzoli, that in general principle, you are in favor of some general form of what I have proposed, in terms of asylum officer screening, and in credible fear of standard.

Ms. SALE. The general principle, yes.

Mr. MCCOLLUM. There are just some things that you might like to do to improve it, and I would, too. So I am welcoming that.



I want to ask a couple of questions related to that. There are suggestions of standards other than "credible fear" in some of the testimony that is going to be given today.

I presume that you would prefer credible fear, because you have a working familiarity and knowledge of that, and it has worked in the detention area.

However, there are people who are going to suggest using—I think a U.N. convention term—"manifestly unfounded claim" or a "frivolous claim," which is a highly technical legal term, and so on.

Am I right that credible fear is a standard you are currently comfortable with, because you have a track record with it? I used the term under that assumption.

Ms. SALE. Earlier, and I apologize, because I do not remember which member said so. Someone alluded to the fact that in today's world, it becomes very difficult to differentiate between refugees and asylum-seekers, because the world seems smaller to us, both because the communication and transportation venues.

Therefore, I think operationally, we would prefer to manage with a single standard. That way, we would be able to have an opportunity to train employees to exercise a single rule, and to do so without all of the complications in having a whole variety of different standards.

We have been working, at this point, in terms of staff work, within the context of the standards that are established in the law, and that are consistent with the conventions of the U.N. at this point.

Mr. MCCOLLUM. That is where credible fear came from and why you are using it today; is that not correct?

Ms. SALE. We have used credible fear as the standard to apply. I mean, I am getting in over my head.

Mr. MAZZOLI. It is the screening process.

Ms. SALE. For the screening process, not for the asylum adjudication. Thank you, Mr. Mazzoli. I was trying to make sure I had not gotten my terms screwed up in my head.

Mr. MAZZOLI. Right.

Ms. SALE. This credible fear is what we use to make a preliminary determination on who then gets put through the more rigorous asylum process. We use that first to make decisions about 30,000 people who were landing on the shores of Guantanamo.

We have also been using it to make decisions about our very, very valuable detention space so that we do not, in fact, hold someone we don't need to hold. This is like the gentleman you spoke of in Seattle, Mr. Nadler, that on its face, at least, appears to have a really good case, and does not need to be further hurt by the world by being in jail for a long time.

Mr. MCCOLLUM. That was my point. That is the standard that you are using, that screening, and that is all my bill would do. Certainly, and hopefully, that Mr. Nadler's example would have been screened into the more rigorous system of a full hearing.

Let me ask you something else while I still have time. Do you have either with you or could you provide to us for the record, the current asylum claim adjudication backlog numbers? I think they ranged up to 200,000 in the past. I do not know where they are right now.

Ms. SALE. Our current number comes to about 261,000, sir.

Mr. MCCOLLUM. About 261,000?

Ms. SALE. Yes.

Mr. MCCOLLUM. Is my understanding correct that you have an objective of trying to resolve about 80,000 a year? Is that not the goal? I know you are not getting there, but is that not the goal?

Ms. SALE. The initial analysis that a 150-officer corp working on a 3-hour standard of case management throughput, was that we would be able to manage about 80,000 a year, and that that was a reasonable estimate. This was based on data of 2 years ago of what we thought our receipts would be.

Receipts are obviously considerably higher. In fact, the reality of the corp, as it is established, is that they are not able to move the cases in 3 hours. They are moving them on an average on 5 hours.

This is the reason for my doing a management analysis review, because there might be ways that we can take some of the burden off of those officers, from a clerical and processing standpoint.

Mr. MCCOLLUM. If I could just finish this train of thought, Mr. Chairman. You are getting less than 80,000 a year resolved even though you wanted to do that?

Ms. SALE. That is correct.

Mr. MCCOLLUM. If I am not mistaken, in addition to having a backlog of about 261,000 now, as you say, we are adding over a 100,000 to the system. Is that correct?

Ms. SALE. We are falling further and further behind.

Mr. MCCOLLUM. I just wanted to make that point. It is a very large number we are dealing with, and a very difficult thing. This is not some relatively easy problem to clear up, because of the backlog and because we are adding so many each year. Thank you, Mr. Chairman.

Mr. MAZZOLI. Thank you. The Chair recognizes the gentleman from New York.

Mr. SCHUMER. Thank you, Mr. Chairman.

I would just like to go back to this London preinspection station, which is not open yet, much to my chagrin. Ms. Sale, why do we need 125 immigration officers at the London preinspection station? Just to give us an example, how many are at Kennedy Airport?

Ms. SALE. There are 340, working out of six facilities. Kennedy's staffing level is both a function of the volume that they work with, and also a function of the fact that you are essentially running four ports there or five ports, because of the way it is configured.

Mr. SCHUMER. Yes. I am there all too much.

Why do we need 120 in London?

Ms. SALE. We built the estimate of 124 in London, actually to be precise, based on 4.2 million passengers coming through London.

Our preference would be to be able to inspect everyone leaving London to come to the States. That way when they landed here, they would be free to, on a random basis, hit Customs or hit Agriculture.

Mr. SCHUMER. So you would not need all the people in Kennedy if you had that many in London?

Ms. SALE. We would not need all the people in Kennedy, Miami, and Chicago, because some of those London flights are going elsewhere.

Let me, as an example, assert that today in Hawaii, we process 2 million inspections. We have 125 employees working the inspections program in Hawaii, which is equivalently the same number as we propose for London for half as many inspections.

Mr. SCHUMER. As you know, I have been thinking that preinspection is not going to solve all the problems at all, but it is one of the ways you can do a lot of good without cutting back, at least in my opinion, too severely on people's rights. What is taking it so long to set London up?

Ms. SALE. Well, in this instance, it takes at least three to tango. Among them is the port authority in London. The port authority in London has revisited their interest in running a mall, as distinct from running an airport, to be perfectly honest. They are currently very, very concerned about what they perceive as revenue loss. That is because once we inspect people, we would want to be able to detain them.

Mr. SCHUMER. So we just come to an agreement with British Airways that they can come into America, but we do not have any leverage over the English to do anything.

I know that is not your department. That is our friends in the State Department. I do not ask you to comment on this, and put you on the spot. However, I have basically been told that the State Department really does not want to do it, still. I know a year ago, they did not want to do it.

They still are resisting this. They do not give it a high priority. It is up to them to negotiate with the Government there. I will just leave that on the record, and wish that the record could show the face of Ms. Sale, as I say that.

Let me ask you, Mr. Ward, isn't it true that you have already received clearance in, I believe, three other countries, to do this? That is, Germany, Belgium—well, it is two, anyway.

Mr. WARD. The only one I am aware of, Congressman Schumer, is that the airport authorities at Brussels did indicate interest.

Mr. SCHUMER. Right. I have been told Germany, as well.

Mr. WARD. That is possible, sir.

Mr. SCHUMER. Do you think if this was taken up at the highest levels of the State Department, say, between the Secretary of State and foreign ministers of other countries, do you think we could get this through relatively quickly, if it was made a high priority?

Mr. WARD. I think, sir, that it is going to vary country by country, depending on how each country looks at it.

Mr. SCHUMER. Let's take the British. If we would have said to them we are not going to approve the agreement to allow British Airways into this country—something very important to them—and, "Could you please ask your port authority to understand our problem and not establish a mall there," what is your guess as to how quickly it would go through?

Mr. WARD. I really could not guess, sir. I share, frankly, the INS's frustration.

Mr. SCHUMER. Do you mean the U.S. Government asks such a tiny little thing, that if we ask that at the highest level as one of the things in exchange for British Airways coming in, that we would not get it right away?

Mr. WARD. I just do not know.



Mr. SCHUMER. Surely, you jest, Mr. Ward. What is your judgment?

Mr. WARD. My judgment is that—

Mr. MAZZOLI. My judgment would be about a nanosecond, basically.

Mr. SCHUMER. It is taking Mr. Ward more than a nanosecond to say that it is not a nanosecond.

All right, I think my colleagues can understand my frustration here, and why we need legislation, and why we ought to do something that, I think, would have, at least last year, gotten the support in the House from one end to the other. That is because it seems to be a fair way to go.

Mr. MAZZOLI. Thank you.

Mr. WARD. Could I finish answering Mr. Schumer's earlier question?

Mr. MAZZOLI. Go ahead.

Mr. MCCOLLUM. I yield to you my remaining nanosecond.

Mr. WARD. That is, I was talking about the issues that have come to the floor that we think need to be reconsidered. The Department of State is not taking a negative position on preinspection at the moment.

As Commissioner Sale mentioned, there is an interagency working group—the border security working group in the White House, that is working this issue. There are decisions, frankly, being made at the senior levels of the administration as to what the administration's position on preinspections is going to be.

So I cannot come up here, certainly, and espouse the administration's position. I can only do what the Secretary of State has directed all of us to do, and that is to come up and answer questions forthrightly.

In the interest of filling my mandate there, I would add just one last thing. That is, there was a joint inspection—a joint audit of the preinspection concept, particularly of London, conducted by the Inspector General from the Department of Justice, and the Inspector General from the Department of State.

That audit has been completed. The draft has been issued, and is being worked through the interagency process. My only comment is, we believe that that process should be completed before any final decisions are made on preinspections.

Mr. MAZZOLI. The gentleman's time has expired. Thank you. The Chair recognizes the gentleman from California.

Mr. GALLEGLY. Thank you, Mr. Chairman.

I do not want to belabor this subject, but I would like to follow up a little bit where Congressman McCollum left off as it relates to the numbers in the pipeline.

It is my understanding, just for the record, there are currently 261,000 unsatisfied cases pending, and approximately 100,000 new ones coming in, currently, each year?

Ms. SALE. Last year, we received 116,000, sir.

Mr. GALLEGLY. OK. That is plus or minus a 100,000, or probably 100,000 plus.

Your goal is 80,000, but I did not hear the exact number that we satisfied last year, that we actually processed. What was the net number of the 80,000 goal?

Ms. SALE. Last year was an extraordinary year, sir, with all due respect, because we had the Guantanamo operation.

Mr. GALLEGLY. Is that good or bad?

Ms. SALE. It was bad. We did 22,000 last year, not counting the interviews in Guantanamo.

Mr. GALLEGLY. What about the year before?

Ms. SALE. The year before, the asylum officer corps did not exist but for about a couple of months. So we began with a backlog of 114,000 and moved about 2,000 of those. That was the year we hired these people and built their offices.

Mr. GALLEGLY. So if we say that the goal is 80,000, and in the past year of the 80,000 goal, we will have processed 22,000 of the 80,000?

Ms. SALE. I expect that this year, we will probably move about 50,000.

Mr. GALLEGLY. So in any event, being optimistic, the goal is to accomplish 50 percent or about 60 percent of the goal?

[Ms. Sale nods in the affirmative.]

Mr. GALLEGLY. Now this issue is, it sounds like this thing is really gaining momentum, kind of like the snowball going down the side of the mountain.

On the issue of military bases closing across the Nation, it does appear that detention centers have some benefit, if we use Los Angeles as an example, other than maybe just moving the problem from one place to another.

Has there been consideration of using the military bases?

Ms. SALE. There is at the Department of Justice an interagency detention planning program. We participate with the Bureau of Prisons and Marshals in that. That committee at large has, in fact, been very careful in looking at the base closure facilities in the context of detention. That is more particularly, for the Bureau of Prisons, frankly, than it is for INS, although it is an option that we are all looking at.

That does not mean they are free, because you still have to have guards and food and laundry services, and all of the operating expenses inherent in a facility. Getting a building and a site is only the beginning of what is involved in this. That, frankly, is a piece of business that we very, very closely need to look at, and we are not prepared to accommodate.

Mr. GALLEGLY. I would just like to make my own editorial comment. The cost of the individuals walking on our streets is not necessarily free either. I do not really mean to put you on the spot, but as the Commissioner, that is one of the crosses we must bear.

Ms. SALE. Yes, sir.

Mr. GALLEGLY. Would it be safe to say that maybe there has been a little less priority placed on working toward more accommodations for detention centers because of the inability to process the ones that walk in, in a timely fashion? Over 50 percent of those who walk through those turnstyles out into the U.S. streets are never to be heard from again. We still cannot accommodate the ones that we do hear from.

If we had a method of processing all of them, would that not, in fact, exacerbate the problem?

Ms. SALE. I am sincerely trying to answer your question directly, and it is a very complicated and difficult one. I think that detention is a piece of a broad agenda of solutions to illegal migration. Probably, the more real deterrent to an illegal migration is deportation.

The reason detention is important from our prospective is, as Mr. Mazzoli said at the very beginning of this morning's discussion, once a person is released along with the general public in the United States, it is very, very difficult for us to ever catch them again, as it were, in order to force this process to occur. I think sincere candidates do, in fact, come back, show up, go through a rigorous process and get adjudicated.

It is the many, many that do not appear to be sincere, at least, because they do not show up, that we would attempt to detain. However, that is a resource issue that is enormous, and it needs to be counterbalanced in the context of what we are spending to detain criminals in this country, some of whom are aliens, and some of whom are not.

It is a very, very broad Federal budget question that you are asking, in addition. Our personal preference might be to detain everyone so that we could do our immigration job. However, there is a bigger agenda here than just the immigration officer wanting to spend all the Federal Government's money on detaining illegal aliens so that they can process them. I mean, I think that is the reality we are dealing with.

Mr. MAZZOLI. The gentleman's time has expired.

Mr. GALLEGLY. Thank you, Mr. Chairman.

Mr. MAZZOLI. Thank you. The Chair recognizes the gentleman from Illinois.

Mr. SANGMEISTER. I just have a few questions, in light of moving things along, as you have a lot of witnesses here, Mr. Chairman.

The matter of detention is not just a problem for the Immigration Service. I mean, our county jails are overflowing, as are our State prisons, and our Federal prisons. In Illinois, and I know in other States—and I certainly am not an expert on it. I wish I had looked more deeply into this. The thought occurred to me now that a lot of them have been using, as I understand it, rather successfully, monitoring devices.

This is where, a person has a device put on them when they leave, and they are put out into the community. I do not know how all those devices work. I do not have all the answers that way. Has anyone in the Service ever thought about monitoring devices?

Ms. SALE. There have been proposals made to me in the time that I have been Acting Commissioner, sir, about parole-like alternatives, including monitoring devices, including checking up on people on a regular basis once they are released. It would mean a very vast shift in resources in INS. Again, I am not the expert on this.

Mr. MAZZOLI. Excuse me. That is not so much a shift within, but a shift to INS.

Ms. SALE. Yes.

Mr. MAZZOLI. I think that is what we are really looking for. I think that maybe is what Mr. Gallegly was saying is part of it. That is, if for example, all these people showed up there would be such a clamor for getting more people, more officers, more space,



that I think you would probably have Congress quickly doing it, and the administration quickly making those recommendations.

So in a way, any of these things we do means a shift to INS of additional resources.

Ms. SALE. Thank you, Mr. Mazzoli. I think it is important for me to at least establish for the record that this administration, in our 1994 appropriation, which will be reviewed by the Appropriations Committees in the coming months, did in fact put an extra emphasis in detention for INS. We are coming forward with not insignificant increases, both to finalize pending detention build-outs along the southern border, frankly, but more importantly to staff existing space so that we can fully utilize facilities that are available.

I do not know if I have answered your question, sir. I apologize if I have not.

Mr. SANGMEISTER. No, that is quite all right. As I understand what you said, there have been proposals made to you or the thought has been given to you, that these devices may be able to work. Is that what you are saying?

Ms. SALE. Yes. I am, frankly, less informed than I would prefer. The concern here is that we are presented with parole-like proposals for a community that is different than the criminal community where those proposals work. This is where, in fact, somebody is eager to get cleared, and maybe more willing to participate with an agency that was handling them, than people, in the proto-typical case here—and this is an exaggeration—who really do not ever want to see us again.

There would, I think, be some very sensitive issues about electronic devices, such as the wrist bands and things of that nature that are being used at a local level to detain people in their homes or at least monitor their traffic. We would have to think those through very, very carefully before we presented them as options. We are not there yet, but it is something to consider.

Mr. SANGMEISTER. Oh, it is just under consideration?

Mr. MAZZOLI. Thank you. The Chair recognizes the gentleman from California.

Mr. BECERRA. Let me for a second turn to a question that is slightly related to what we are discussing right now. In the "60 Minutes" piece, Mr. Slattery mentioned that because the New York detention facility was full, that he had no choice but to let some of these asylum claimants go out into the streets of New York.

In Florida, the Haitian asylum-seekers, who were confronted with the same situation, with full detention facilities, were not allowed to go into the streets, but were instead shipped to detention centers in Texas and Louisiana. Can you explain the difference between the New York asylum-seekers and the Florida asylum-seekers?

Ms. SALE. In the Florida asylum-seekers, we were at that time—and I am talking now November, December of last year—dealing with an imminent migration, and a very, very large input of people. We were frankly very concerned that we send a very specific message of a deterrent nature. Those people have all gone through the process, and many, many have, in fact, been released if they have a credible claim.

It is not, however, exclusively true that people in New York are all released. We are moving people from New York facilities to Denver, as an example. We have an obligation to use the resources that are available to INS across the country.

Those resources are both housing money per diem for detention space, as well as transportation resources. Moving someone from New York to Denver is a far more complex scenario than moving from someone Miami to northern Florida, for example, where we had State and local facilities that we were able to acquire space in.

Mr. BECERRA. It seems that we continue to return to the whole question of detaining people as a deterrent. You mentioned that that was a deterrent in the case of the Florida asylum-seekers, and to make sure that you do not have mass immigration into the country.

Why does it seem to me that I do not hear enough from the INS saying that detention and increasing the detention facility capacity is a priority, given that it is clearly used as a deterrent in many cases, and, in fact, has been shown to work as a deterrent in the case of Los Angeles?

Ms. SALE. I guess that I can not necessarily agree that we are not arguing for increased detention.

Mr. BECERRA. Is an increased amount being requested?

Ms. SALE. Yes, sir.

Mr. BECERRA. How much is that? What is it currently, and what is the requested increase?

[Additional information submitted by Ms. Sale follows:]

The 1994 budget request for the Detention and Deportation program, including fee accounts, is 1,888 positions, 1,760 FTE, and \$222,344,000. The 1994 request is 265 positions, 137 FTE, and \$22,061,000 above the 1993 budget request for the Detention and Deportation program.

For alien travel, detention and welfare, the increased funds for FY 1994 are \$2,253,000. This figure is on top of a base of \$62,048,000 which is planned to be spent in FY 1993.

Ms. SALE. Fifteen to twenty million dollars. The 1994 budget requests an increase in \$16 million in detention in appropriated funds.

Mr. SCHUMER. What did it go from—from what to what?

Ms. SALE. Hang on a minute.

Mr. MAZZOLI. We will get that for the record.

[Additional information submitted by Ms. Sale follows:]

There is also approximately \$14,000,000 for alien travel, detention and welfare in the Inspections User Fee Account in FY 1993. An additional \$1,081,000 is being requested in FY 1994, bringing the total in FY 1994 to \$15,081,000.

Ms. SALE. We would like to provide it for the record. It is on the order of, and I am going to say these off the top of my head and correct them later if I need to, sir, from \$60 million to \$55 or \$70 million. So it is not an incidental increase.

It is principally those appropriated funds are principally to comport with expansions in facilities on the southern border. Those facilities will be available for all our cases on an as-needed basis.

We also have \$30 million in the user fee, which are then for exclusion cases, which are being requested this year for detention. That is an increase as well.

Mr. BECERRA. Are those \$30 million in funds being used for something currently?

Ms. SALE. That is the current national budget out of the user fee accounts for exclusion cases. We have two kinds of money for two kinds of detention. User fee money is the money that comes in out of the inspections fund, and that we use exclusively to detain people who have arrived fraudulently under the terms of that act. That is principally, out of airports.

The appropriated funds are used for essentially all other detention, and the biggest hit on that money is criminal detention, as we meet our obligation under the criminal justice requirements to detain people, subject to deportation hearings.

Mr. BECERRA. Thank you.

Mr. MAZZOLI. I thank the gentleman. Could I ask one quick question. How much of this money or any is paid by the airlines under the fines that they pay?

Ms. SALE. The \$38 million that I alluded to as user fee, sir, is part of the \$5 per capita tax or our share of the \$12 per capita tax for international travelers.

The fines money is not currently being used necessarily for detention. Oh, is there seven? OK, then, I stand corrected. Seven of the fines money that we have collected is also being applied to detention.

Mr. MAZZOLI. The airlines pay this \$3,000 fee in a per diem for people who have to be shifted over into detention, because they arrive without documents. Is that correct? I am curious as to what point are these fines triggered.

Ms. SALE. Fines are triggered on a finding by an immigration inspector that passengers have arrived without documents.

Mr. MAZZOLI. Thank you. I recognize the gentleman from New York.

Ms. SALE. That is without proper documents, I should say.

Mr. NADLER. Thank you, Mr. Chairman.

I want to focus on what I was focusing on in my series of questions before. Namely, the proposal for summary exclusion of people without documents or with improper documents. I read you one case, and you said well that was before a new system of more trained personnel was put into place.

This comes from a list of four cases supplied by the Lutheran Church, which states that, "The notable aspects of these case studies is that they all represent the types of cases that would be affected if summary exclusion were enacted. Three out of the four finally got asylum over opposition by the INS.

"All traveled without documents or with false documents, a very common occurrence with asylum-seekers. Despite the strong cases for asylum, in three out of four the INS was overruled, and all were inappropriately detained while other cases obviously went free."

You had stated that the first one was before modern times. It was 2 years old. So I have a case from 1993 and one from October 1992. I will just summarize them.

In 1992, Mr. "L," a national of Nigeria, attempted to enter the United States on a fraudulent Nigerian passport. He was detained



at JFK. He was put into exclusion proceedings, and sent to the Springfield Detention Facility.

He was denied parole into the United States. He wrote to Amnesty International and requested assistance. He selected counsel from a list provided, and was granted political asylum in March of this year.

His father was an ex-general in Nigerian Army, a leader of a Christian Caitiff Tribe, and a critic of the Muslim government. He was arrested with other prominent Christians after a series of religious rights between Moslems and Christians.

He was held on charges of murder and supplying arms to the Christians. These are charges which Amnesty International believes were false. Mr. "L" protested his father's arrest, together with others whose fathers were detained. The authorities arrested Mr. "L," confiscated his passport and severely tortured him.

Then, after spending 3 months in prison under no official charge, he escaped with the help of a priest, who had been a regular visitor to the jail. The priest told him that his brothers had been killed. He later found out that his father had been convicted of murder and sentenced to hang.

Mr. "L" hid until his false documents were in order, and his trip to the United States was arranged. He was taken into custody immediately upon his arrival at JFK Airport.

He was in the detention center when the "60 Minutes" camera crew showed up to film for March's segment. He hid himself from the cameras out of fear.

As he granted asylum, the immigration judge called Mr. "L" the most credible witness he had ever had before him, according to his attorney. Yet Mr. "L" had previously been denied parole, as the INS found him a threat to abscond.

Now, I could read another case, which is equally as compelling. It was someone from Haiti. He was under threat of persecution, because he refused an order. He was a soldier who refused an order to execute a bound prisoner.

The immigration judge stated that he faced prosecution, presumably for disobeying orders to kill the prisoner, and not persecution. Therefore, he did not qualify as a refugee. This was remanded upon appeal.

The system currently in place helped these refugees—barely. I wonder if a cursory review of even these compelling cases, because they did not have documents, might have resulted in their exclusion and their persecution.

Could you comment, please? These are current and in late 1992. [Additional information submitted by Ms. Sale follows:]

A system which provides for summary exclusion of aliens must be predicated upon a cadre of highly-trained officers who perform the interview and screening function. They must have country conditions materials at their disposal when making decisions on the possibility of persecution occurring in a given country. A quality assurance operation must also be in effect to review a sample of decisions made by this officer corps. These procedures would provide the safeguards to ensure that a refugee would not be returned to a country where he or she would be persecuted.

Ms. SALE. Is it Mr. Needler?

Mr. NADLER. It is Nadler.

Ms. SALE. Nadler. I was not sure if I was mispronouncing your name, sir. Thank you.

Mr. Nadler, I would like to ask two things, if I may, please. I would like to see the cases and get the staff to look at them so that we can review them and respond to you for the record in a way that I am incapable of doing without having the paper in front of me.

Secondarily, however, I think, as a generic matter, I would like to make sure that the committee understands the distinction between the cases before our asylum officer corps, and the case that is an exclusion proceeding, and being heard by an immigration judge for the first time.

Many of these exclusion cases are brought before a judge for exclusion purposes. At the point of the exclusion hearing, the candidate has an opportunity to apply for asylum. That candidate for asylum does not come to Immigration for his review. He rather goes before that judge and stays before that judge for that asylum adjudication.

Absent our having gone through this credible fear interview while the candidate was in detention, we would not necessarily ever have done anything, other than said this person is subject to exclusion proceedings. Under the proposals that are before Congress and your committee today, that candidate would have received that credible review at the airport and perhaps never have gone into detention under my reading of the facts as you read them.

That process is not happening today. We simply say you do not have documents, we have a place to house you, we are going to house you until the judge gets to you. Consequently, we are dealing with a system that is bimodal.

Mr. NADLER. My real problem is the following. My reading of these cases is that they were cases in effect, in which, despite the compelling situations or seemingly compelling situations, the INS said no to asylum and was overruled by a judge or an appeal. My question is, under the bill that says that you would have a summary proceeding if you did not have documents, that person would never get to a judge?

Ms. SALE. Not having the paper before me, I cannot assert this for a fact. However, if I heard your reading of it correctly, those cases were not heard by INS for asylum purposes. They went directly to the judge. Having gone directly to the judge, the person was held.

Mr. MAZZOLI. Ms. Sale, you might want to explain, for the record, that the immigration judges are separate and apart from the Immigration Service.

Ms. SALE. Thank you, yes.

Mr. MAZZOLI. So the immigration judges may very well have done something here that we would not agree with. However, they are not the trained asylum officers that you have under your jurisdiction at the Immigration Service. They are, since 1991, specifically trained to ferret out exactly the kind of detail Mr. Nadler has brought up and that the Lutheran agencies have brought up.

Therefore, one of the things done by all of these bills before us today, by the gentleman from New York, the gentleman from Florida, and my own, is that it will harmonize the process, and get reasonable standards of proof. That is so that you have one standard,

and it is done by the same people who are trained to do it. I think that is the whole idea here.

Ms. SALE. However, I would appreciate an opportunity to respond to you, for the record, on those cases with them in hand.

Mr. NADLER. I will be glad to send this to you.

Ms. SALE. Thank you, sir.

Mr. MAZZOLI. The gentleman from New York, Mr. Schumer, had one final question. We appreciate your patience. However, the gentleman is a sponsor of major legislation, so we want to let him to go forward.

Mr. SCHUMER. My question is simply this. If somebody flies from a country where there might be the possibility of persecution, goes to London and then comes here, what is the basis that, because they flew from London and because of the European Community rules that, for instance, says that the first country they land in the European Community is the one that adjudicates the rights—what is the basis for them to make an asylum claim here?

That is, we do not have any record of the British Government, say, persecuting Muslims or Hindus or something that might have happened in India or in Pakistan. I am just picking an example.

Ms. SALE. The asylum adjudication is based on the instant case and the country conditions at the time that the case is adjudicated. Therefore, what country you transited does not really have a bearing. It is possible in some instances if the person transited via London, for this purpose not even to have been inspected in London, by London customs or immigration inspectors.

Mr. SCHUMER. Let's exclude that case for the moment. What about the others where they were in London for a period of time?

Ms. SALE. For 3 or 4 or 5 years and then they moved to the United States.

Mr. SCHUMER. Or 2 days.

Ms. SALE. Or 2 days.

Mr. SCHUMER. Why should, by any stretch of anyone's imagination, those people be considered persons in asylum here?

Ms. SALE. Well, the current law at this point as drafted, says they are. I am sure you are aware that Canada, in particular, for instance, is in bilateral negotiations with us.

Mr. SCHUMER. I am asking just for your judgment. I mean, I have never been persuaded that a person who flies from London to here after having the freedom to be on the British streets for any period of time, is then a person in asylum here. The asylum process should be narrowing. The refugee process maybe should be expanding. However, I just do not get it, and no one has explained it to me.

Ms. SALE. Well, sir, my judgment today is limited by what the law requires. The law requires that you consider them as candidates for asylum.

Mr. MCCOLLUM. Would the gentleman yield on that, because that is a part of my bill. That actually is a technical part of the bill.

Mr. SCHUMER. I understand.

Mr. MCCOLLUM. It is actually a technical part of the bill that says we are going to return that person to London in that case, and let them make that decision.

Mr. SCHUMER. I understand that. I mean, as somebody concerned with the cases that Mr. Nadler brought up, but trying to find some limits here, this seems a logical place.

Mr. MAZZOLI. I think the gentleman has brought up, as usual, a very important point. It is really awkward. It puts strain on the system and it defeats the system for the good people—the ones who really are seeking asylum.

Again to get back to what the gentleman from California said earlier today. At a time when there appears to be an anti-immigrant sentiment, born of a series of dark sides that we all might have or a series of television episodes like “60 Minutes,” we have to be sure that we grant it for the right people, but deny it to those who are manipulating it.

Mr. SCHUMER. That question underlies the basis for preinspection.

Ms. SALE. Yes, sir, it does.

Mr. SCHUMER. That is why preinspection, I think, is a sound idea—I mean, I have not heard a single good argument against it other than the diplomatic ones, which as I have made clear, does not seem to me to be a good argument.

Ms. SALE. We only Friday, as Mr. Ward suggested, received a joint IG report, and it is under review. We have an obligation from a fiduciary standpoint, if none other, to make sure that—

Mr. SCHUMER. Fiduciary? Well, you are not from New York, evidently. Have you ever been to the Catskills?

Mr. MAZZOLI. The gentleman is on the Banking Committee, as well. Anytime they get fiduciaries, you are talking about Federal reserves. He then puts on his other hat.

Ms. SALE. Thank you for your indulgence.

We are reviewing that set of reports. I have questions about the modeling assumptions and the like, but I think we owe it to ourselves and to the public to be sure on that.

Mr. SCHUMER. Thank you.

Mr. MAZZOLI. That was very well done. I want to thank you very much. I think it has been an excellent panel. You have gotten some very interesting information on the record. We want to thank you very much.

Mr. GALLEGLY. Mr. Chairman, could I just make one request of Ms. Sale before we recess or move onto the next panel?

Would it be possible for you to get this subcommittee hard-copy data on the numbers that we talked about earlier—the 260,000 in the pipe line, and how many we have actually processed in the last couple of years, and what the continuing backlog is?

Ms. SALE. Absolutely. I can provide that for you.

We will put those in a table on Friday for the record, sir.

[Additional information submitted by Ms. Sale follows:]



The following table delineates asylum applications filed, completed, and pending for fiscal years 1988-1993.

ASYLUM CASES PENDING, RECEIVED AND COMPLETED  
FISCAL YEAR 1988-93

<u>Fiscal Year</u>	<u>Cases Pending Beginning FY</u>	<u>Asylum Cases Filed with INS</u>	<u>Asylum Cases Completed</u>
1988	80,730	60,736	68,357
1989	73,109	101,679	102,795
1990	71,993	73,637	48,342
1991	97,288	60,600*	16,400*
1992	134,999	103,447	22,674
1993	215,772	105,000**	40,000**

\* Data for FY 1991 are estimates. Complete data will be available in the near future.

\*\* Data for FY 1993 are projections based on data through March. As of March 31, there were 261,725 asylum applications pending with the INS.

NOTE: During FY 1992 (October - May), the Asylum Officer Corps was diverted to Guantanamo Bay, Cuba to pre-screen Haitians interdicted by the U.S. Coast Guard.



Mr. GALLEGLY. Thank you very much.

Mr. MCCOLLUM. May we have permission to submit questions?

Mr. MAZZOLI. Certainly. I was going to mention that. In the unlikely event that there are questions that still have to be asked of you, we would ask that.

I guess the chairman reserves the last word. When the gentleman from New York said that he wished the record could show the look on the face of the Commissioner, let the record show that the look was inscrutable.

[Laughter.]

Ms. SALE. Thank you.

Mr. MAZZOLI. We thank you all very much. I will now call our next panel. Mr. Gene McNary, we welcome you again, as the former Commissioner of the Immigration and Naturalization Service; Mr. Robert Rubin, the assistant director of the Lawyers' Committee for Civil Rights of the San Francisco Bay Area; Prof. Katherine Vaughns of the School of Law, University of Maryland; Mr. Rick Norton, the managing director, facilitation, Air Transport Association; Mr. Vincent Bonaventura, general manager of Newark International Airport, Airport Operators Council International.

Again, we welcome this new panel, and all your statements will be made a part of the record. We now welcome Mr. McNary, former Commissioner of the Immigration and Naturalization Service, and a veteran of this place and this subject. We welcome you, Gene. You may proceed.

#### STATEMENT OF GENE McNARY, FORMER COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE

Mr. McNARY. Well, thank you, Mr. Chairman. It is nice to be invited.

Mr. MAZZOLI. It is nice to see you back.

Mr. McNARY. I have appreciated the courtesy that I was always extended when I testified on some very complex issues over the past 3½ years. I can answer some of the questions or at least I have answers to some of your questions that were raised to the last panel.

Mr. MAZZOLI. Interestingly enough, to the extent that you all would feel comfortable of varying from your testimony—because you have had the opportunity of listening to the first panel and they crystallized some of the issues, and they show us some of the problem areas. So that would really actually help us quite a bit if you feel you could divert from your prepared statements.

Mr. McNARY. Let me speak, though, to the three bills that are before you. I applaud you for your effort. As I have said in my statement, I believe that these bills can be combined into a very workable, forward-thinking asylum solution.

I should add that the United States does not face this question alone. I mean, Europe is beleaguered with asylum problems. They really have less of an excuse than we do, because we bring in a million people a year, legally. Most European countries do not have any legal immigration, so asylum is the only thing that they deal with. They have ethnic purity over there.

Let me go into some of the history, and I will do it quickly. During the 1980's after the Asylum Refugee Act was passed, it was

pretty clear—and I inherited this when I became Commissioner—that the new workload was too much for existing asylum examiners.

There was a specialty there, and human right's organizations were quick to demand better trained examiners, separate consideration of asylum applications, and the removal of the asylum program from the oversight of district directors, some of whom were viewed as being overly enforcement oriented.

Lawsuits were filed challenging INS adjudications. You are familiar with those. They are still being litigated with tremendous amounts of money involved. I think that substantial progress was made during my 3 years in trying to wind those up and bring about a resolution.

The system was one, however, that led to abuse. It was pretty easy for someone to come in, claim asylum, and eventually get a work permit. Once the work permit was obtained, the purpose for coming in illegally had been achieved. They submerged themselves in the subculture.

I would submit that we have millions today living in a subculture, in inhumane conditions, where they really are denied the protections of the laws. They cannot call the police. They are victims on an ongoing basis.

It became particularly acute with the passage of IRCA, the Immigration Reform Control Act, on which I know you were the leading statesman. However, that particular situation requiring a person to have documentation before they could be employed, meant that it was virtually impossible for some of these people to gain employment. The employer now was subject to sanctions and asylum, even more so, and it became the artifice for getting automatic work authorization.

It was apparent in 1989 when I was preparing for the Senate confirmation hearings that the problem could be solved in part through the institution of an independent, specially trained corps of asylum officers with resources available to provide knowledge of current country conditions.

The State Department reports have been—and I am giving my opinion here—properly criticized as routine rubberstamp accounts. It was also clear that the widespread abuse of our country's legal system had to be brought under control. The obvious solution was provide for an immediate hearing, decision, and grant of asylum or return to the country of origin, if appropriate.

At the outset, I was committed to push for promulgation of asylum regulations upon my appointment as Commissioner. The original regulations were drafted by the Justice Department, and they adopted a twofold approach, which included not only asylum adjudicators, but also streamlined the procedures for a speedy determination of asylum claims.

Unfortunately, the accelerated resolution procedures that you are addressing today were deleted at the instance of the asylum advocates based upon their assurance that once the independent corps of trained adjudicators was in place, the need for long delays in four levels of appeal would be eliminated, and then we could address a speedy procedure, which would eliminate these abuses.

INS has complied with its commitment to establish a quality and fair adjudication process. The corps of adjudicators reports to the Deputy Commissioner of INS. It is separate from the districts and other INS examiners. One hundred and sixty adjudicators have received extensive training.

They have been put to the test at eight different locations in the United States, plus the Haitian adjudications in Guantanamo. The corps, as you have already heard, has received many accolades and been recognized by United Nation's High Commissioner for Refugees, as a model to be emulated by the rest of the world.

However, the real success is not within reach, because loopholes within the law, permit the appeals process to be abused, and the intent of the law circumvented. While the corps of a 160 can be infinitely expanded, there will never be enough adjudicators until the second phase of the original plan is implemented to hold the flow of those who enter illegally for economic reasons.

The time has come to establish procedures necessary to guaranty the expeditious resolution of asylum decisions to ensure that a helping hand is extended to those who meet the U.S. criteria for refugee status, while sending a clear message to those who would abuse our laws and take advantage of our generosity to remain in their own country.

There are some basic considerations, and I am going to run through them quickly. However, I think there is a consensus. First of all, we must establish effective and timely procedures that will facilitate our humanitarian policies. INS must be positioned so that it can be substantively generous if it is procedurally rigorous. Procedure is of the utmost importance.

At present, the system is broken. Backlogs are overwhelming. Detention facilities are inadequate. Those seeking to enter the country illegally know they can fraudulently enter, claim asylum, obtain a work permit, and fade into the subculture. We know smugglers are organized, because large numbers, which you have heard already, entering with fraudulent documents will shift from one port of entry to another.

Recognizing detention as a deterrent, some have suggested here today that expanded detention capacity should be pursued. However, in my judgment, this is an inadequate solution, which is not only a budget buster. Let me tell you, if we are going to detain everybody that comes in with fraudulent documents, we had better be ready to put in a \$1 billion, at least, to detain people. However, it also results in the confinement of many persons who have committed minor crimes, and have come to the United States in search of a better life.

Next, most illegal entry is for the purpose of obtaining employment. These are the abusers of the system. Once a work permit is obtained, these individuals have no incentive to attend their asylum hearing or otherwise pursue their asylum claim.

Lastly, there is a near universal agreement throughout the world that a person claiming asylum should be returned to the country from where he or she came, providing an asylum claim could have been made in that host country. You just addressed that. Mr. Schumer is right on target, as are the other two sponsors.



Unless this procedure is followed, asylum-seekers will continue to country shop and overwhelm select countries, while passing through those where asylum was available.

A Dublin convention was convened to discuss multinational agreements on this issue. That was a very important convention. Unfortunately, the United States was not a party to those discussions. I have said later on that I think it should be reconvened. We should not only be a party, but take a leadership position.

Now, with regard to exclusion of asylum reform amendment, I think it is basic. I think the other bills are vitally important. However, Mr. Chairman, the bill, which I think is the real reform measure, is your bill. I do not believe it is workable without summary exclusion.

We are in a position now, because of trained adjudicators, to provide due process. We are not going to have an adversary system, with notice and a hearing by trained adjudicators, who actually know more than immigration judges right now. Those trained adjudicators can safeguard against the very type of situation that has been discussed.

The quality control can be established with not only supervisors, but these things can be videotaped and reviewed. There can be a check one against the other.

Therefore, I am confident and would not stand for anything short of a fair hearing for anyone who comes in. That can be done at the airport.

Those people coming from London, where they could have claimed asylum or coming from France or Canada where they do not have a case for well-founded fair persecution, should be returned. They should not clog our docket and abuse this system, and make it impossible for us to be generous to those who are deserving.

With regard to Mr. Schumer's bill, all of that is vitally important. I would say to you that if it happens, it will have to be mandated by law. The State Department is not going to do it.

I was there. They have resisted, fought, and kicked and screamed from the very beginning. I could not tell you this before, but now that I am independent, I can tell you this.

We have intercepted wires where they actually said, "They are not going to get anywhere with this. We have got this strategy and that strategy."

We are going to have to mandate it. It needs to be done. There is no reason why we do not go into the 21st century and inspect people at high traffic airports—the major airports—and try to weed out those who are about to get on with fraudulent documents, or we know that they are coming in for purposes for which they should not come in.

Your bill, Mr. Chairman, is outstanding. The 7-day requirement is excellent. I said in my statement that we have now these eight sites around the country. Even someone coming in between the ports of entry could appear at one of those sites and ask for asylum within 7 days. I think that then it comes back to a year, and they still should be excludable, under Mr. McCollum's act, if they do not take advantage of that.

Let me wind this up here. I have a conclusion, which pretty much sums it up. I think that your bill really, Mr. Chairman, should be moved to the very outset, on the nonrefoulement. I have some problems with calling it, nonrefoulement. That is a French term.

Mr. MAZZOLI. One of the later witnesses will address himself to that same point. I am not sure that I disagree.

Mr. McNARY. Well, in any case, I think if we have summary exclusion and then simply procedures on asylum, that those cases can be expeditiously adjudicated. We have helped the people that we should help.

Let me say that Mr. Gallegly is pressing on the number of cases backed up on the asylum docket—261,000. I should point out that if a notice went out, we do not know how many of those people are dead.

We know that a bulk of them are from El Salvador, and are governed under TPS; or Nicaraguans, and maybe it is time for Nicaraguans to go back. That question needs to be addressed.

However, the point is that a bulk of them are El Salvadorans, Guatemalans, and Nicaraguans. Once some action is taken, then you are going to have one of two things: either those people are not going to come in—I mean, they will sink back into the subculture, because they know that they do not have a claim—or they will leave.

That is because they know that the country's conditions have changed, especially in Nicaragua. Once TPS runs out, if it ever does, then there is same situation for El Salvador.

Mr. MAZZOLI. Very good. Thank you very much, Gene.

[The prepared statement of Mr. McNary follows:]



PREPARED STATEMENT OF GENE McNARY, FORMER COMMISSIONER,  
IMMIGRATION AND NATURALIZATION SERVICE

Mr. Chairman and Members of the Committee:

Background

Before addressing the provisions of the three bills that are under consideration, it is important to consider the purpose of the legislation and the problems they seek to remedy.

The Refugee Act of 1980 recognized and incorporated international definitions and concerns. It placed the responsibility for adjudicating refugee and asylum applications on the Immigration and Naturalization Service.

During the first half of the 1980's, the quality of adjudication was inadequate as INS District Directors absorbed the new program into their existing workload. Human rights organizations were quick to demand a better trained examiner, the separate consideration of asylum applications, and removal of the asylum program from the oversight of the District Directors, who were perceived as being overly enforcement-oriented.

Lawsuits were filed challenging INS adjudications, and appeals were taken on virtually every denial of asylum. Although some of the appeals were meritorious, the appeal process was routinely utilized as an effective dilatory tactic that could delay the ultimate decision for years. As the appeal wound its way through the system, the applicant could work and establish equity and a family life in this country that could later be used to provide grounds for relief from deportation.

This abuse of the immigration laws was clearly not in the best interest of the nation, and the problem became more acute following the passage of the Immigration Reform and Control Act of 1986, with its employer sanctions.

Suddenly those entering the country illegally found it more difficult to obtain employment. With the guidance of the immigration bar and others, they discovered a way around the law through the routine application for asylum. The Service's inability to meet the time limitations for asylum adjudication coupled with the mushrooming backlog of applications, created a near certainty that a work permit could be obtained through the mere filing of an asylum application. Thus, this artifice carried with it the added benefit of automatic work authorization.

It was apparent in 1989, when I was preparing for Senate confirmation hearings, that the problem could be solved in part through the institution of an independent, specially trained corps of asylum officers with resources available to provide knowledge of current country conditions (State Department reports had been properly criticized as routine rubber stamp accounts). It was also clear that the widespread abuse of our country's legal system had to be brought under control. The obvious solution was to provide for an immediate hearing, decision, and grant of asylum or return to the country of origin, if appropriate.

At the outset, I was committed to push for promulgation of asylum regulations upon my appointment as Commissioner. The original regulations which were drafted by the Justice Department

adopted a twofold approach which included not only asylum adjudicators, but also streamlined procedures for the speedy determination of asylum claims. Unfortunately, the accelerated resolution procedures were deleted at the instance of asylum advocates, based upon their assurance that once the independent corps of trained adjudicators was in place, the need for long delays and four levels of appeal would be eliminated.

INS has complied with its commitment to establish a quality and fair adjudication process. The corps of adjudicators reports to the Deputy Commissioner of INS and is separate from the Districts and the other INS examiners. One hundred sixty adjudicators have received extensive training and they have been put to the test at 8 different locations in the U.S. and in the Haitian adjudications at Guantanamo. The corps has received many accolades and has been recognized by the United Nations High Commissioner on Refugees as a model to be emulated by the rest of the world.

However, real success is not within reach because loopholes within the law permit the appeals process to be abused and the intent of the law circumvented. While the corps of 160 can be infinitely expanded, there will never be enough adjudicators until the second phase of the original plan is implemented to halt the flow of those who enter illegally for economic reasons.

The time has come to establish the procedures necessary to guarantee the expeditious resolution of the asylum decision to ensure that a helping hand is extended to those who meet the United

States' criteria for refugee status, while sending a clear message to those who would abuse our laws and take advantage of our generosity to remain in their own country.

#### Basic Considerations

All three bills before you contain provisions with merit that can be combined into effective legislation. In analyzing these bills, the following should be borne in mind:

(1) We must establish effective and timely procedures that will facilitate our humanitarian policies. INS must be positioned so that it can be "substantively generous if it is procedurally rigorous."

(2) At present, the system is broken. Backlogs are overwhelming and detention facilities are inadequate. Those seeking to enter the country illegally know that they can fraudulently enter, claim asylum, obtain a work permit, and fade into the subculture of the United States. We know smugglers are organized because large numbers of persons entering with fraudulent documents will shift from one Port of Entry to another in an effort to overload our system.

(3) Recognizing detention as a deterrent, some have suggested expanded detention capacity. However, this is an inadequate solution which is not only a budget buster, but also results in the confinement of many persons who

have committed minor crimes and have come to the United States in search of a better life.

(4) Most illegal entry is for the purpose of obtaining employment. These are the abusers of the system. Once a work permit is obtained, these individuals have no incentive to attend their asylum hearing or otherwise pursue their asylum claim.

(5) There is near universal agreement throughout the world that a person claiming asylum should be returned to the country whence he or she came, provided an asylum claim could have been made in the host country. Unless this procedure is followed, asylum seekers will continue to "country shop" and overwhelm select countries while passing through those where asylum was available. The Dublin Convention was convened to discuss multi-national agreements on this issue.

#### Exclusion and Asylum Reform Amendment of 1993

Basic to any solution is the passage of H.R. 1355. While this bill calls for summary exclusion, special asylum adjudicators will make an accurate assessment of the case. Safeguards can be built in and quality control assured.

The significance of H.R. 1355 is that it separates or filters out the frivolous claims by trained adjudicators, at the earliest possible time. The corps of adjudicators is in place and it can be



expanded if necessary and deployed to airports and other strategic locations.

Once the frivolous claims are weeded out, including those where the applicant flew in from a country where he or she could have claimed asylum or where country conditions in the country of origin were not such that a claim of persecution could in any way be justified, then the numbers of persons who present a credible claim and enter into the asylum system will be manageable and the detention space required substantially reduced.

In addition, for nearly two years INS has experimented with a screening program which identifies those persons that are most likely to be granted asylum and meet certain criteria which assures their appearance at the asylum hearing. These individuals are released pending their asylum hearing. Thus, the need for detention space is further reduced.

#### Immigration Preinspection Act of 1993

H.R. 1153 is primarily designed to facilitate the expeditious movement of passengers through the nation's airports. However, the provisions requiring preinspections and carrier consultants are critical to asylum reform. The ability to detect fraudulent documents prior to boarding reduces the number of illegal entries into the United States.

As I mentioned before, illegal entry is not a random occurrence in most cases. Organizations deal in fraudulent

documents, transportation, and support at all stages. It would be a mistake to target airports or seaports, other than high volume traffic ports, because smugglers will adjust to airports where there is no preinspection or carrier consultant operation. Thus, a more flexible, unpublished designation will be more effective.

Asylum Reform Act of 1993

Now Mr. Chairman, by reducing the illegal entry to manageable numbers through the enactment of H.R. 1355 and H.R. 1153, your more comprehensive reform bill becomes workable and progressive, comprising an asylum system that will be emulated throughout the world.

Most significant, is the requirement that the applicant for asylum present his or her claim within seven days after entering the United States. It is reasonable to require one who fears persecution, if returned to his or her homeland, to take the initiative, and file a claim rather than waiting until the individual is put in deportation proceedings. The so-called "nonrefoulement" hearing should be merged with the initial asylum officer hearing which takes place immediately at Ports of Entry and could be held within seven days for applicants entering between the Ports of Entry at one of the INS asylum offices.

This original adjudication must be used to weed out the frivolous claims. Once persons have made a credible claim to the asylum officer, then and only then should the full rights

guaranteed by our Constitution be afforded to those who seek sanctuary in our country. Otherwise, as I said before, the issuance of work authorization will serve to attract those who enter illegally to gain employment.

Once a "credible claim" is established, then all the procedures and legal rights provided in H.R. 1679 pertaining to a "nonrefoulement" hearing should inure to the benefit of the applicant. At this time, however, the issue becomes one of "asylum" and whether the applicant has a "well-founded fear of persecution." This proceeding should constitute the asylum hearing. If the standard is met, the applicant should be granted asylum. If not, then one administrative appeal and access to the Federal Courts can be provided.

I believe the asylum hearing should be conducted by INS' specially trained asylum adjudicators. These professionals have the expertise and are better prepared than Immigration Judges to make an accurate determination and thus conduct a fair hearing. Advanced technology can be utilized to great advantage. Not only by holding video hearings at remote sites, but also by using the tapes for quality control and as a record for appeal.

In keeping with the INS assertion that we can be substantively generous if we are procedurally rigorous, I would not change the refugee definition or the burden of proof. If our procedures are tightened and those who seek to abuse our system are quickly returned, then we will be better positioned to help those who reasonably believe that they would be persecuted if repatriated.

Conclusion

We must devise a workable system for providing safe haven for those fleeing from political oppression. Virtually every country is struggling with this problem. Over the past three years the INS has met with representatives of English-speaking and other nations in search of solutions. The problems of the future must be approached on a world-wide basis with substantially more involvement by the UNHCR. The Dublin Convention should be reconvened, with the United States an aggressive participant.

Meanwhile, INS has assumed a leadership role through the creation of an asylum adjudication corps, a Resource Information Center and several experimental projects. Although INS seems to be under constant scrutiny and criticism, most of which is uninformed, the most dedication and the greatest expertise in the area of asylum is housed at the INS Headquarters. Many are here today.

Mr. Chairman, I implore you to call upon this expertise in meshing the three bills into a 21st Century asylum system. For too long, INS has been accused of a "keep 'em out at all costs" mentality. This charge is unfounded. I have witnessed more heart and humanitarianism at INS than at any other agency, at any level of government.

The people at INS are dedicated to human beings and to this country. Please look to them to provide the technical understanding and skills required to forge this vitally important legislation.

Mr. MAZZOLI. Mr. Rubin.

**STATEMENT OF ROBERT RUBIN, ASSISTANT DIRECTOR,  
LAWYERS' COMMITTEE FOR CIVIL RIGHTS OF THE SAN  
FRANCISCO BAY AREA**

Mr. RUBIN. Thank you, Mr. Chairman. In accordance with your suggestion, I would like to depart somewhat from my planned statement and respond to a few things that have gone on this morning.

Frankly, Mr. Chairman, I am very troubled by much of what I have read regarding the proposed bills here under consideration today and much of what I have heard this morning. Maybe I am troubled because I see the faces of these refugees coming in and out of my office every day. We run the largest pro bono asylum program in the country in our Lawyers' Committee office in San Francisco right now.

These folks come in. We hear their stories. Some of their cases are appended to my written testimony today.

I see people who come in with fraudulent documents, but bona fide claims. I see women who were raped by government forces in El Salvador and persecuted beyond imagination. They come in, crossing through obviously other countries, and then entering the country with either no documents or fraudulent documents.

Those are the kind of people that would be summarily excluded under the proposed legislation we are hearing today. That troubles me greatly.

I have also recently returned from counseling my clients who I represent in Guantanamo—Haitian refugees down there. I just hope that the manner in which we have been treating them does not become the standard by which we are going to now judge the fairness of our asylum policies. That is because it is horrible what we are doing.

Mr. MAZZOLI. I take offense at your recommendation of that, or at you even saying that today. It is offensive to me to hear that. However, please proceed.

Mr. RUBIN. I'm sorry, what?

Mr. MAZZOLI. I say it is offensive when you would even suggest that that is what this committee would wind up doing.

Mr. RUBIN. Well, I would hope not.

Mr. MAZZOLI. Well, I mean, I think it is evident from what we have been saying this morning. How can you ever say something like that?

Mr. RUBIN. Well, I can say that, sir, because it is current administration policy.

Mr. MAZZOLI. Well, then argue with the administration. Do not argue with us.

Mr. RUBIN. Well, my fear, of course, is that some of the proposals here today would not even allow people to have reached Guantanamo. They would be back in Haiti today. So that is why I say what I do, because the proposals that we are considering would do just that.

Mr. MAZZOLI. Please proceed.

Mr. RUBIN. I really think that that is what this debate is about. I think that it is about whether or not we are going to succumb



to fear or whether we are going to exercise leadership around these issues. I know this committee, with your chairmanship in the past, has done so. I hope it will continue to do so.

I hope that we are going to respond to tragic events thoughtfully, not reflexively. We are going to know what the real problems are, and not be distracted by side issues. We are not going to be distracted by those who would point the finger at the powerless and blame them for our failure to commit ourselves to the integrity of our asylum system.

Indeed, again, my trouble is based on much of what I hear in the public debate. Some are now practicing the politics of division. I hear them saying, and I am quoting here, that there is going to be, "bloody battles settled in the streets" as a result of our asylum system. I think those appeals are abhorrent and should be condemned by this committee.

Mr. Chairman, we cannot compromise principle in the asylum system until we are ready to commit the necessary resources to allow the present system to work. Again, I apologize. I realize that some of that criticism very well should be directed at either the current or previous administrations and not at the Congress.

However, the fact remains that we should not be enacting broad sweeping statutory changes before we allow some of these administrative reforms a genuine opportunity to be successfully implemented.

As you well know, final asylum regulations took over 10 years from the time the Refugee Act was enacted for final regulations to be promulgated. It was only after intensive discussions, which I think ultimately bore fruit, that resulted in the development of the asylum officer corps, which is independent of INS enforcement branches, and indeed a very, very positive step in the right direction.

The regulations also created, of course, the documentation center that now relies on nongovernmental reports, as well as the State Department reports that I think Commissioner McNary appropriately characterized. Now while sound in principle, the new system has suffered from a lack of sufficient funding.

That, in turn, has led to understaffing and delay, which, of course, is in my mind one of the primary causes of the abuse that we are talking about here today. Those delays have allowed abuse by the few who are seeking only the de facto stay of deportation inherent in the failure to issue prompt rulings.

So my point, Mr. Chairman, is that it just seems conspicuously precipitous today to be talking about a new asylum program when the "old" one is still in such a nascent stage. The question with regard to the backlog, that I believe Mr. Gallegly was asking, amply revealed it had really only been in place for 1 year, and much of their resources were diverted to the Guantanamo effort. They have not really had a fair chance.

The whole issue of numbers and whether or not they are capable of dealing with it, I think, is something that we should very closely focus on, too, because we can be scared away by numbers. That creates the fear that leads sometimes, I think, to some of the proposals. That is this sense of 100,000 people each year coming into the

country and overwhelming the asylum system, and that they are all abusing the system.

This is the graph that was published along side the piece in the Sunday Times. I am sure most, if not all of you, saw it then.

[Graph displayed.]

Mr. RUBIN. As you can see, essentially, from 1980 to 1992, there are two bumps in the graph that take you considerably above what is otherwise a pretty steady state of 20,000 to sometimes 25,000 to 40,000 people applying each year. The bumps are in 1989 and 1992, when we reach 100,000 people.

Mr. Chairman, in late 1987, then Attorney General Meese issued what we call the Meese memo. This, basically, was an open invitation to Nicaraguan asylum-seekers to come into the country, be granted work authorization, or remain as long as they wanted. I think it was Mr. McCollum that was just asking the question whether that time has past, and perhaps that that generosity should cease.

Well, that is why you had 100,000 people coming in, in 1989. We invited those people. You want to talk about abuse of the asylum system. This was abuse of the asylum system for blatantly political reasons, in order to embarrass the Government in Nicaragua that we did not like.

Now, because we abused the system then, we are now blaming these rising numbers, and to my mind, we are ready to propose some fairly dramatic reform.

The other bump in the graph was 1992. That was the only other year that we reached this 100,000 figure, that I think, very unfortunately has now become this working number of cases that are going to come in; when, in fact, as you can see, the numbers are considerably less.

The bump in 1992, Mr. Chairman, was due to the readjudications of approximately 50,000 cases, representing at least half of that 100,000 number, which was the result of litigation and a court order that recognized that for 10 years the INS had been unlawfully discriminating against Salvadorans and Guatemalans. The court ordered that those cases be readjudicated.

That is where you get at least half of the 100,000. Now, we are so quick to call for reform, and punish the numbers of asylum-seekers who come in, for doing what? It is for pursuing a court ordered remedy that they had been discriminated against.

Mr. MAZZOLI. Again, I resist, and I really resent the fact that you say we are going to punish asylum-seekers.

We seek not to punish asylum-seekers. We want to punish the people that are part of that syndicate, the people who are abusing our system. Do not say that we are trying to punish asylum-seekers. I do not like that talk.

Mr. RUBIN. Well, I appreciate the intent, but, frankly, my analysis—

Mr. MAZZOLI. Well, you do not have to trust us, but you do not have to say that that is what we are going to do.

Mr. SCHUMER. How about the more than 50 percent who never show up? We should just do nothing about that?

Mr. RUBIN. No, first of all, sir, I take issue with those numbers, too. We have had numbers that show over the first quarter of this year that there has been a 90-percent show rate.

Mr. SCHUMER. Who is, we?

Mr. RUBIN. The people who follow this issue, the courts, and in asylum proceedings. I work out of San Francisco.

Mr. SCHUMER. It is not a scientific sample, is it?

Mr. RUBIN. I do not think that the numbers that have been thrown around today, reflect scientific methodology either, with all due respect.

Mr. SCHUMER. I do not want to interrupt. However, it seems to me that a government agency that is compiling statistics and then you are saying "we" and it is a group of people you talk to—believe me, a jury of a 100 people not even knowing what the issue is, would believe those statistics before they would believe yours, casting aspersions on no one's integrity.

Mr. RUBIN. I will accept that for the moment. However, even taking those figures, let's analyze what the failures to appear were a result of.

There are also these same government studies, and the GAO has done a series of studies, on how notices never get to applicants. That is a primary reason.

A recent empirical study showed that less than 1 percent of all immigration hearings continued and delayed were a result of the alien's failure to appear. That was empirical data, sir.

Mr. SCHUMER. Well, are you saying that your empirical data is OK, but the Government's empirical data is not OK?

Mr. RUBIN. Well, I just think that it causes one to question some of the numbers. We should not get too absorbed in the numbers.

My point is that whatever the numbers are, I think that we ought to examine what they mean, and that they do not always mean that someone is seeking to abuse the system. There are inherent flaws in this system. We would like to see that tightened up. I think that delays in the system hurt all of us.

Mr. SCHUMER. There are a bunch of people who never intend to ever show up.

Mr. RUBIN. It certainly does not hurt the people who do not intend to show up.

Mr. SCHUMER. However many they be.

Mr. RUBIN. Yes, and I do not encompass them in that way. They certainly hurt the integrity of this system, and they certainly hurt folks who are interested in reforming this system.

Again, I have been handed numbers here, too, which corroborate what I have been saying.

Mr. SCHUMER. Just give us the source—not "we" or a group of people we talked to. That is all I am asking. It may be right, but it does not assure me when you say, "a group of people I talked to says that this is the number."

Mr. RUBIN. Well, there was the study done by the Harvard Law School that studied failure to appear rates. That is the study that I cited as the source for the less than 1 percent of delays in immigration hearings that were due to the alien's failure to appear. These are numbers that I have just been handed here, too, with regard to cases filed.



Mr. MAZZOLI. I have just been advised that in order to try to indulge everybody, while we are going a lot later, is there some way you can sum it up, Mr. Rubin?

Mr. RUBIN. Yes, Mr. Chairman.

Again, I do want us to look beyond the numbers. I think that Mr. Schumer's questions are fair in that regard. I know you just came in late. I was pointing out that this 100,000 number that we are now throwing around can very easily be explained by what frankly had been the administration's abuse of the system.

One is in the case of the blanket invitation to Nicaraguans that created a 100,000 bump, and then there is the discrimination against Salvadorans and Guatemalans that contributed to the 1992 increase in the cases.

I might also point out that those are the same people. Those do not even represent new people coming into the system. Those are the same people that we have denied in earlier years that are just coming back into the system.

I would also submit that even with all of those numbers, we average approximately 40,000 to 45,000—or those are at least the numbers that have been compiled in the last 13 years—approximately 40,000 to 45,000 asylum applicants a year. We let that many in during a lottery last year.

Mr. MAZZOLI. OK.

Mr. RUBIN. If I could just finish on a point that I think perhaps focuses on some things that we can do. I realize that I have been critical of some of the proposals that have been offered.

Mr. MAZZOLI. Well, try to speed it up, if you could.

Mr. RUBIN. I think that there is another way out. I think that, frankly, it does require some commitments by this committee and the administration to allow the existing system an opportunity to work.

One is, that we can end indiscriminate detention policies that result in detaining every asylum-seeker without regard to the merits of their asylum claim. The APSO program, the prescreening program, is a good step in the right direction. Again, it is woefully underfunded, and really only handles a matter of a few hundred cases.

In the present state, it is not the answer. Instead what we do is that we end up detaining, of course, bona fide asylum-seekers, because it is so indiscriminate. Those moneys that we could save from the indiscriminate detention policy could be shifted into the asylum program, and I think it would be an important source for doing that.

Second is, we could specially earmark a greater percentage of the current fees that go toward other immigration applications. I think that that has been an important source of funds, and I think that it ought to be increased.

Finally, I see no reason—when we are talking about special appropriations for building larger detention facilities, which in certain instances may be appropriate, that for what I am told is probably no more than maybe \$15 million—that we couldn't seek a direct appropriation so that we could deal with some of the backlog issues in asylum and the asylum process that do lead to abuse and that do lead to delay.

Then we can really ensure that the kinds of commitments that, I think, this committee has made to fairness in the asylum process, are preserved, while at the same time dealing with some of the abuse that we have talked about.

Mr. MAZZOLI. Thank you very much. Those are very helpful suggestions.

[The prepared statement of Mr. Rubin follows:]

PREPARED STATEMENT OF ROBERT RUBIN, ASSISTANT DIRECTOR, LAWYERS'  
COMMITTEE FOR CIVIL RIGHTS OF THE SAN FRANCISCO BAY AREA

INTRODUCTION

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to address these critical issues related to preserving the integrity of our asylum system. The Lawyers' Committee for Civil Rights in San Francisco coordinates the largest pro bono asylum program in the country. As such, we are intimately familiar with the practical realities that confront refugees. For the past twelve years, in addition to overseeing the work of the asylum program, I also have directed our national litigation and policy advocacy efforts related to refugee protection.

SUMMARY OF TESTIMONY

A nation's self-identity is integrally related to its response to those who seek to become members of its citizenry. Particularly when those seeking entry are persons fleeing persecution, our ability to be a moral compass in this complex world is dramatically impacted by how we respond.

When certain individuals abuse our laws, we must respond quickly and forcefully. When such individuals commit criminal or terrorist acts, the public justifiably demands corrective actions. But our response must be thoughtful, not reflexive. It must be motivated by a desire to address core problems while resisting the urge to offer quick-fix, superficial answers that only lend the appearance of a "solution."

We must not compromise principle because we are unwilling to



commit the resources to preserve our asylum program. We must not enact broad-sweeping statutory change before recent administrative reform is accorded a genuine opportunity to be successfully implemented.

Final asylum regulations were not promulgated until ten years after the enactment of the Refugee Act in 1980 and only after intensive discussions among agency officials and non-governmental experts. The 1990 asylum regulations established an Asylum Officer corps independent of INS enforcement branches. The regulations also created a documentation center with credible governmental and non-governmental materials to end INS' exclusive reliance on the State Department country condition reports.

While sound in principle, the new asylum system has suffered from a lack of funding, leading to understaffing and serious backlogs. The delays in rendering final decisions have allowed for abuse of the system by those few seeking only the de facto stay of deportation inherent in the failure to issue prompt rulings.

It appears conspicuously precipitous and fiscally imprudent to embark on a new asylum program when the "old" program is still in a nascent stage and has not been afforded adequate resources to accomplish its mission. Such drastic change threatens this country's commitment to protection for the overwhelming majority of asylum seekers who are not abusing the system and possess nonfrivolous claims.

Finally, a reorienting of INS detention priorities is not only essential to a credible asylum system but can provide an important

source of funds for addressing the delays and backlogs that jeopardize the current asylum system. Through INS' policy of indiscriminate detention, we guarantee that legitimate asylum seekers will be detained while also ensuring that, given limited detention space, asylum abusers will be set free. This is the policy that must be reformed, and it can be accomplished without erecting substantive and procedural barriers that the most meritorious asylum claimants will be unable to surmount.

#### H.R. 1679 -- ASYLUM REFORM ACT OF 1993

##### A. Imposing A Higher Standard Of Proof For Asylum Applicants

The Asylum Reform Act of 1993, H.R. 1679, would grant "nonrefoulement" protection only to persons who can establish that "it is more likely than not that . . . such alien's life or freedom would be threatened." This standard abandons the 1980 Refugee Act's "well-founded fear" standard which the U.S. Supreme Court determined in INS v. Cardoza-Fonseca, 480 U.S. 421 (1987), to be applicable in asylum cases. 8 U.S.C. §1158. The Court previously held that the more rigorous "more likely than not" or "would be threatened" standard governs withholding of deportation cases, 8 U.S.C. §1253(h), where the applicant must demonstrate "a clear probability of persecution." INS v. Stevic, 467 U.S. 407 (1984).

By conflating the two standards and allowing refugee protection only to those who can satisfy the more burdensome test, the proposed legislation flouts our international obligations toward fleeing persons. One of Congress' primary purposes in

enacting the Refugee Act of 1980 "was to bring United States refugee law into conformance with the 1967 United Nations Protocol Relating to the Status of Refugees, 19 U.S.T. 6223, TIAS No. 6577, to which the United States acceded in 1968. Indeed, the definition of 'refugee' that Congress adopted . . . is virtually identical to the one prescribed by [the Protocol's 'well-founded fear' standard]." Cardoza-Fonseca, 480 U.S. at 436-437.

The Supreme Court has been emphatic in stating that this "refugee" definition "does not require an alien to show that it is more likely than not that he will be persecuted." Cardoza-Fonseca, 480 U.S. at 438 (emphasis added). "One can certainly have a well-founded fear of an event happening when there is less than a 50% chance of the occurrence taking place." Id. at 431. In distinguishing between the "well-founded fear" and "clear probability" tests, the Court reiterated that to satisfy the "well-founded fear" standard, "it need not be shown that the situation

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<sup>1</sup>Some argue that no other area of the law allows for such a generous burden of proof. Such reasoning is seriously flawed. First, there are many immigration contexts in which the alien bears no burden of proof. In the deportation context, for example, the alien has no burden. The INS must prove by "clear, convincing and unequivocal evidence" the alien's deportability. Woodby v. INS, 385 U.S. 276 (1966). If the INS fails to sustain its burden of proof, the alien may not be deported.

Second, while it is true that one need only demonstrate that persecution is a "reasonable possibility" to satisfy the "well-founded fear" test, Stevic, 467 U.S. at 424-425, the showing is quite similar to that required to obtain protective orders in domestic violence cases. The battered spouse generally must show that she has a justified fear of future domestic abuse. P. Finn & S. Colson, U.S. Dep't of Justice, Civil Protection Orders: Legislation, Current Court Practice, and Enforcement 1 (1990) (emphasis added). Because both asylum law and domestic violence law are designed to protect against future violence, the evidentiary standards accommodate this reality.

will probably result in persecution, but it is enough that persecution is a reasonable possibility."<sup>2</sup> Stevic, 467 U.S. at 424-425.<sup>3</sup>

If the Congress now wishes to retreat from its adherence to this accepted definition of refugee, it should say so explicitly. In so doing, the Congress should acknowledge that we are adopting a refugee law that allows for persons with a "well-founded fear" to be forcibly returned to their persecutors.<sup>4</sup>

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<sup>2</sup>The Handbook on Procedures and Criteria for Determining Refugee Status ("Handbook"), issued by the Office of the U.N. High Commissioner for Refugees, supports this analysis: "In general, the applicant's fear should be considered well-founded if he can establish, to a reasonable degree, that his continued stay in his country of origin has become intolerable . . ." Handbook at ¶42. The Supreme Court has recognized the Handbook as providing "significant guidance in construing the Protocol, to which Congress sought to conform [in enacting the Refugee Act]." Cardoza-Fonseca, 480 U.S. at 439, n.22.

<sup>3</sup>Another reason why the more generous "well-founded fear" evidentiary standard should be applied is that "[p]ersecutors are hardly likely to provide their victims with affidavits attesting to their acts of persecution." Bolanos-Hernandez v. INS, 767 F.2d 1277, 1285 (1984). As the UNHCR Handbook correctly observes, at ¶47,

Often ... an applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule. In most cases a person fleeing from persecution will have arrived with the barest necessities and very frequently even without personal documents.

The requirement of evidence should thus not be too strictly applied in view of the difficulty of proof inherent in the special situation in which an applicant for refugee status finds himself.

<sup>4</sup>Persons whose deportation would be carried out pursuant to this new standard include those fleeing countries where it is known that "every tenth adult male person is either put to death or sent to some remote labor camp." Cardoza-Fonseca, 480 U.S. at 431,

Whatever abuse may exist in the asylum process cannot be traced to an asylum standard that is too lenient. First, current numbers of asylum applicants, and their countries of origin, generally correlate with those countries experiencing serious human rights violations.<sup>5</sup>

Second, persons seeking to abuse the asylum process are individuals without any claim of political persecution. They are not concerned with the substantive standard governing grants of asylum. A more burdensome standard, therefore, does nothing to discourage them from applying because they only want to submit an application and then abscond. Consequently, the more restrictive standard will only punish persons with well-founded fears of persecution who are unable to demonstrate that it is more likely than not that they will be persecuted.

In sum, this provision of the Asylum Reform Act of 1993 is not only violative of our international obligations to protect fleeing refugees but wholly ineffectual in accomplishing its legislative intent.

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(fn. 4, cont'd) quoting 1 A. Grahl-Madsen, *The Status of Refugees in International Law* 180 (1966).

<sup>5</sup>During FY 1992, applications from the following countries accounted for 92% of the total asylum applications filed during this period: Guatemala, El Salvador, Ex-Soviet Union, Haiti, Philippines, Mainland China, Pakistan, India, Cuba, Ex-Yugoslavia, Romania, Nicaragua, Liberia, Peru, Honduras, Bangladesh, Ethiopia, Laos, Iran, Sierra Leone, Mexico, Bulgaria, Colombia, Syria and Jordan. "Refugee Reports," October 30, 1992. Given the documented human rights abuse that has taken place in each of these countries, claims of persecution by persons from such countries cannot be dismissed as frivolous or clearly abusive.



B. Requirement Of Filing, Within 7 Days Of Entry, A Notice Of Intention To File Nonrefoulement Application

The Asylum Reform Act would require persons unfamiliar with United States law to file a notice of intention to file an application for nonrefoulement within seven days of entering this country. Given the circumstances that confront someone who has recently fled their homeland, it is pointlessly punitive to bar such individuals from obtaining refugee protection unless they file a document with a federal agency within seven days of their arrival.

Current asylum law appropriately recognizes that potential refugees may have no choice but to enter illegally into this country and then to apply for asylum. There is no realistic way that such persons will even be aware of the seven-day rule. Thus, this provision would ensure that a significant number of asylum seekers would be denied protection without ever being afforded the opportunity to present their claims.

Consider, for example, a Bosnian woman who has been tortured and raped but is able to escape her persecutors and flees to the United States. She is suffering from post-traumatic stress syndrome upon arrival here. Notwithstanding the strength of her claim and her current condition, she will be barred from any form of refugee protection unless she files this document within seven days of entry.

While too broad in its sweep, this provision of H.R. 1679 correctly points to a major flaw in the current asylum system -- delay. It is in the interest of both the government and bona fide

asylum seekers to avoid delay. Only those few seeking to abuse the system benefit from delay. But before we assume that delay is simply a product of asylum applicants' failure to appear for hearings, the true causes for delay should be examined.

A recent empirical study revealed that bureaucratic inefficiencies were the principal cause for delay in adjudicating asylum claims. Anker, "Determining Asylum Claims in the United States," 2 International Journal of Refugee Law 252 (1990). The study concluded that "[t]he longest cause for delay in the entire process was the EOIR's difficulty in readily producing transcripts for appeals; the unavailability of these transcripts caused average delays of twenty-two months after the immigration judge had rendered a decision." *Id.* at 259. With regard to delay caused by the asylum applicant, the study showed that "[i]n less than one per cent of the continued cases were those continuances attributable to the lawyer's or the applicant's failure to appear." *Id.*

These findings are yet further evidence that it is not the "behavior" of the asylum applicant that is the greatest threat to the integrity of the system but rather the bureaucratic inefficiencies, largely a product of lack of funding, that allow delay and abuse.

### C. Funding For The Asylum System

H.R. 1679 contemplates the imposition of a filing fee on persons seeking an asylum remedy. Requiring a fee as a condition of filing an application should be considered only as a last resort

for funding the asylum program. Refugees flee their homes with the barest necessities and imposing a fee could foreclose protection for the most needy, and perhaps the most deserving.

An immediate source of revenue for the asylum program could be found by reallocating the expenditures currently spent on the indiscriminate detention of asylum applicants. Wholesale detention is unjustified and by diverting scarce resources, ultimately counterproductive to preserving the integrity of the asylum system.

The APSO (Asylum Pre-screening Officers) program, providing for release of those asylum applicants with credible claims who are unlikely to abscond and do not pose a threat to community, is an important step in the right direction.<sup>6</sup> Unfortunately, it operates on a very limited basis; it should be expanded so that all bona fide asylum applicants are not subject to detention. Successful implementation of the APSO program will allow for the diversion of substantial resources from detention into the asylum system.

If proposed reform to the asylum system is driven by the public's demand to correct abuse of the system, the public should be willing to pay for it. Americans support protection of refugees. With proper leadership, the public will understand that abuse and bureaucratic inefficiencies in the asylum program not

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<sup>6</sup>If APSO had been in effect in 1989, the INS would not have had to resort to the aimless detention of thousands of Central American asylum seekers that turned the Rio Grande Valley into a large detention camp. The Service could have averted costly litigation and perhaps more importantly, avoided the public specter of a federal agency exposing asylum seekers to living conditions cited by a federal judge as "squalid" and posing "[g]rave health and safety concerns." Morazan v. Thornburgh, Civ. Action No. B-89-002 (S.D. Texas 1989), slip op. at 2.

only permit entry of those who exploit the system but that, without adequate resources, the system's capacity to respond even to legitimate refugees is threatened. If both objectives -- deterring abuse and promoting refugee protection -- can be satisfied through a modest infusion of general revenues, there should be a public consensus to support it.

Another source of supplemental revenue for the asylum program could be a fee surcharge on other applications for immigration benefits. It also should be considered before imposing fees as a condition of filing asylum applications.<sup>7</sup> Similarly, fees were recently imposed on asylum-related applications, including a \$120 fee for adjustment of status and a \$60 fee for renewals of work authorization. 58 Fed. Reg. 12146 (March 9, 1993). Receipts from these various fees should be specially earmarked for the asylum program.

#### H.R. 1355 -- EXCLUSION AND ASYLUM REFORM AMENDMENTS OF 1993

##### A. Denial Of Availability Of Asylum To Persons Who Fail To Present Valid Documents Upon Arrival

Section 2 of H.R. 1355 provides that, with limited exception,

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<sup>7</sup>If a direct fee on asylum applications is contemplated, it must be accompanied by a liberal fee waiver policy both in terms of the substantive and evidentiary standards. The substantive standard should parallel the federal poverty guidelines and documents that are not reasonably available to recent arrivals, such as tax returns, must not be required. In the past, the INS has proved incapable of fairly administering fee waiver policies so its practices must be closely scrutinized. See Cortez v. Barr, Civ. S-91-565 (E.D. Cal. 1991) (finding INS fee waiver policy "grotesquely unreasonable").

persons seeking entry into the United States with fraudulent documents may not even apply for asylum. The insinuation is that use of false documents is evidence of bad character, thereby rendering the individual unfit for entry into the country. While this "fraud exclusion" applies to all persons who seek to enter the United States, it is particularly misguided in its application to persons seeking asylum.

Governing jurisprudence, relevant guidelines and common sense reveal that this legislative proposal is simply not grounded in the reality of the refugee's experience. In fact, possession of valid travel documents is often viewed as evidence that the individual does not have a well-founded fear of persecution in his country.

The UNHCR Handbook, for example, provides that possession of a valid passport often raises a presumption that "the issuing authorities do not intend to persecute the holder, for otherwise they would not have issued a passport to him." Handbook at ¶47. Indeed, the Handbook goes so far as to warn adjudicators that "the mere possession of a valid national passport is no bar to refugee status." Handbook at ¶48. This admonition obviously contemplates that fleeing persons often are unable to secure passports or exit visas. It is ironic then that we should propose a law that will penalize bona fide refugees for falling within the precise circumstance that is acknowledged to be the typical plight of persons fleeing persecution.

But H.R. 1355, purportedly based on the premise that persons should not circumvent orderly refugee procedures, does just that.



The clear implication is that individuals should apply for refugee status at U.S. Embassies in their home countries. But overseas refugee processing is not available to many persons seeking refugee protection.

In Latin American countries, for example, there is no established U.S. overseas refugee program. Indeed, the number of persons admitted through overseas refugee processing<sup>8</sup> reveals the gross disparity among various nationalities seeking refugee protection. For the period 1980-1992, of the total 1,336,957 refugees admitted, 835,030 were from East Asia and 366,787 were from the former USSR and East Europe. Only 23,307 were from Latin America and 13,219 of this total were from Cuba. "Refugee Reports," March 31, 1993. These glaring disparities cannot be explained by the relative degree of human rights abuse occurring in these respective regions.

Quite simply, overseas refugee processing is not a viable alternative for many bona fide refugees who have no choice but to use fraudulent documents to escape the country of persecution.<sup>9</sup> Indeed, those persons with the strongest claims of persecution will be known to governmental authorities; it is ludicrous to require them to obtain exit visas from their persecutors.

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<sup>8</sup>Refugees processed overseas are admitted pursuant to §207 of the Immigration and Nationality Act (INA). Persons already in the United States who apply for asylum are processed pursuant to §208 of the INA.

<sup>9</sup>Acknowledging the limitations in the overseas process, the Refugee Act itself adopted a separate and distinct procedure for asylum protection to persons applying from within the United States. INA §208.

During the Reagan Administration, this reality was acknowledged at the highest level of administrative review within the Department of Justice. In a unanimous decision reached by the five Members of the Board of Immigration Appeals, the Board held that asylum adjudicators must not focus solely on the use of fraudulent documents but should examine "the totality of the circumstances and actions of an alien in his flight from the country where he fears persecution." Matter of Pula, 19 I. & N. Dec. 467, 473 (BIA 1987) (granting asylum to Albanian asylum applicant who used fraudulent documents to enter).

Recognizing the precarious circumstances that might confront asylum seekers, the Board emphatically rejected the irrebuttable presumption approach proposed by H.R. 1355. Use of fraudulent documents "can be a serious adverse factor, but it should not be considered in such a way that the practical effect is to deny relief in virtually all cases." Id.

The Board stressed that asylum adjudicators should consider other relevant discretionary factors that might militate toward a grant of asylum.<sup>10</sup> For example, adjudicators should consider

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<sup>10</sup>Even H.R. 1355 acknowledges a limited circumstance under which use of fraudulent documents should not be an absolute bar to asylum. By creating an exception in cases of "direct departure" from the place of persecution, Sec. 2(b), the legislation concedes the need for flexibility: certain positive discretionary factors may outweigh the negative factor of using fraudulent documents. But the bill ultimately adopts an inflexible approach by otherwise conclusively precluding an application for asylum when entry is sought through fraudulent documents.

Furthermore, while "firm resettlement" is a proper basis upon which to deny one the right to asylum, a "direct departure" requirement is much too stringent. Passing through a country which does not or will not provide refugee protection, or "some other

whether orderly refugee procedures were available. Other relevant factors include "whether the alien has relatives legally in the United States or other personal ties to this country which motivated him to seek asylum here rather than elsewhere." Id. at 474. Other humanitarian considerations, such as minor status or poor health, may also be relevant factors to be balanced against entry with fraudulent documents.

Perhaps the most pivotal factor is the degree of persecution that the individual might confront. If someone has demonstrated a particularly compelling claim for asylum, deportation obviously could result in serious harm or death. "In such a case, the discretionary factors should be carefully evaluated in light of the unusually harsh consequences which may befall an alien who has established a well-founded fear of persecution; the danger of persecution should generally outweigh all but the most egregious of adverse factors." Id. at 474. Under H.R. 1355, if entry was sought through the use of fraudulent documents, the immigration officer would not even make inquiry into the individual's fear of persecution as this factor would be irrelevant.

**B. Any "Summary" Exclusion Procedure Must Be Premised On The Lack Of Merit Of The Asylum Application**

If the Congress chooses to adopt some form of "summary" exclusion, the determinative factor must be the lack of merit of

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(fn. 10, cont'd) type of permanent resettlement," cannot be grounds for denying asylum to someone who later seeks protection in the United States. See 8 C.F.R. §208.15.

the asylum application. The exclusion cannot rest on the use of fraudulent documents nor on the failure to promptly apply for asylum. Otherwise, the practical impact of doing so could lead to disastrous results involving the deportation of persons still traumatized as a result of being persecuted. See Appendix A (summarizing actual cases in which proposed legislation would have resulted in deportation of persons with particularly compelling asylum claims).

While such "negative" factors may be relevant, therefore, they cannot be considered in a vacuum. They must be carefully balanced against other factors that might militate toward a grant of asylum. Indeed, creating irrebuttable presumptions insults the intelligence of asylum adjudicators and immigration judges by suggesting that they are incapable of weighing positive and negative factors. The adjudicators before whom the asylum claim is presented must be allowed a degree of flexibility to respond to the actual facts of the particular case.

Under any summary exclusion procedure designed to "weed out" abusive asylum claims, adjudicators should utilize the "frivolous" standard as the screening mechanism. The "frivolous" standard is the functional equivalent of the international standard "manifestly unfounded" and has a distinct advantage in terms of effective implementation by virtue of asylum adjudicators' familiarity with its application to employment authorization requests submitted by asylum applicants. 8 C.F.R. §208.7 Furthermore, the "frivolous"

standard has been the subject of extensive judicial scrutiny<sup>11</sup> and thus, the courts already have provided instructive guidelines to adjudicators in applying this standard.

#### CONCLUSION

Only last year, twelve years after the passage of the Refugee Act, the Supreme Court issued its first substantive interpretation of the "well-founded fear" standard. INS v. Zacarias, 112 S.Ct. 812 (1992). Only two years ago, a newly trained Asylum Officer corps, independent of INS enforcement functions, assumed responsibility for adjudicating asylum claims. Yet today, we are considering proposals to dramatically revamp the substantive standard and impose inflexible rules on adjudicators that preclude them from responding to the actual facts before them.

We must move beyond a reflexive law and order perspective that views all asylum seekers as "border crashers" who must be punished through deterrence, detention and deportation.

Instead of diminishing the few rights that asylum applicants have, let's address the real problem -- delays in the system that allow for abuse. The problem is not a overly generous asylum standard that results in too many grants of asylum. The denial of the claims of 99% of Haitian and Guatemalan asylum seekers is a strong testament to that fact.

Much of the problem can be traced to a lack of funding for the

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<sup>11</sup>See Diaz v. Ilchert, 648 F.Supp. 638 (E.D. Cal. 1986); Alfaro-Orellana v. Ilchert, 720 F.Supp. 792 (N.D. Cal. 1989); and Ramos v. Thornburgh, 732 F.Supp. 696 (E.D. Tex. 1989).



new Asylum Officer corp that has produced a debilitating backlog of cases. The Congress should commit itself to providing adequate funding for the new asylum system as the most effective method of expediting the process. In so doing, we address delay and abuse but not trample upon the rights of bona fide asylum applicants.

Oftentimes, it is easier to simply target an unpopular group as the cause of societal woes and then punish that group. But while satisfying the public by at least appearing to offer an answer to their genuine concerns about terrorism, gun control, drugs or a budget crisis, we avoid the need for devising real, lasting solutions to vexing problems. The challenge before us today is to respond to certain frailties in our asylum system while ensuring that we do not erode core principles that bind American society.

## APPENDIX A: SUMMARIES OF ACTUAL CASES

Many refugees have had to endure unspeakable and horrific experiences. They have witnessed family members and relatives hacked to death; many have been incarcerated and tortured. In order to survive such ordeals, they have had to live in silence. The proposed legislation would force them to reveal, almost immediately upon entering the United States, the most intimate and grisly details that compelled them to flee their homeland.

Many refugees carry psychological scars as a result of their experiences. Indeed, the incidence of post traumatic stress disorder (PTSD) among refugees is quite high. PTSD is a psychological disorder resulting from situations of great stress. It has been diagnosed in Vietnam veterans, concentration camp survivors, rape victims and refugees. Its symptoms and manifestations are varied. Often, refugees repress painful experiences and have difficulty recalling them. Such circumstances render representation of refugees extremely difficult. It is only once rapport is established with an attorney, that refugee fears dissipate and a clear story may emerge. Since obtaining asylum depends upon the presentation of credible, cohesive facts demonstrating a well-founded fear of persecution, PTSD impedes a refugee's ability to help herself.

In addition to the consequences of trauma, representation of refugees is also compounded by cultural and language differences. Some refugees may arrive from societies where the cultural norm is to withhold information, especially from governmental authorities.

Since 1983, the Lawyers' Committee for Civil Rights has directed a political asylum program through which it has represented thousands of refugees. The following case histories illustrate the difficulties confronted by refugees in preparing for their cases. It is only through representation by counsel that these bona fide refugees were able to overcome severe barriers and obtain asylum.

## Case One:

"Pedro A." is a Salvadoran who in the early eighties worked as a city garbage collector in San Salvador. During his employment, he and his coworkers organized to form a union. They sought only to improve their wages and working conditions. The early eighties in El Salvador were years of severe repression. Within a span of a few months, eight of the client's coworkers were either murdered or disappeared.

One night, as the client was walking home from work, he was abducted by men without uniforms. They placed him in a darkened cell and beat him brutally with rifle butts. They draped the "capucha" --a hood dusted with lime--over his head. They also suspended him by his testicles. At various intervals his captors interrogated him, accusing him of being allied with guerrilla

forces and insisted that he disclose the names of his collaborators. His captivity last ten days. At the end of his ordeal, his abductors led him to a field and told him to walk as they shot around him. The client described running like a madman and collapsing in a field.

The next day he woke up wearing only his underwear. He received help from a passerby who took him to a hospital for treatment. As soon as he was able to gather his belongings, he fled to the United States where he was apprehended by immigration officials shortly after crossing the border.

The Immigration Court referred the client to the Lawyers' Committee and the case was assigned to pro bono counsel. There began a series of difficulties. It took the client two months to establish a relationship with his attorney such that he was able to work with her and disclose the facts of his case. The client failed to keep his appointments with counsel. His attorney almost withdrew because of his uncooperativeness. Finally, the Lawyers' Committee referred the client to a psychiatrist for a psychological evaluation. His counselor concluded that the client suffered from severe PTSD. He suffered from recurring nightmares and flashbacks. He avoided any discussion of his experiences. After months of painstaking preparation, the client was granted asylum by an immigration judge in San Francisco.

#### Case Two:

"Carolina S.", a middle-aged Salvadoran woman, had been a housewife in a poor neighborhood of San Salvador. Through her church she and her husband had become involved with a program aimed at distributing food and providing health awareness for the impoverished children in her community. She and her husband fled El Salvador together and sought representation from the Lawyers' Committee.

During her interviews, Carolina spoke of the anonymous death threats that she had received. She also described being detained by security forces but was vague about her experience. An astute male volunteer attorney recognized that in recounting her story, the client had not accounted for all of her time. Thus, the attorney advised his female interpreter to meet separately with the woman. During this session, the volunteer interpreter gently probed the client until she was able to reveal her horrific experience.

As she was coming back from the market with groceries, the woman had been abducted by soldiers. They placed her on a truck bed on which lay a rotten mattress. For several hours, five soldiers took turns raping her. After that, they tortured her by setting the mattress aflame with matches. They taunted and laughed at her as she sought to avoid burns. The woman felt great shame by this experience and had not even revealed this psychological trauma to her husband. It took her months with the

help of her volunteer attorney and interpreter as well as the assistance of a trained counselor to become comfortable enough to testify of this experience in immigration court. Carolina S. was ultimately granted asylum.

#### Case Three:

"Jackson W." was a Chinese stowaway who had participated in an anti-government organization. He had been incarcerated and denied education benefits as a result. The UNHCR had monitored the refugee's movements as he was smuggled out of China on a Danish freighter. The UNHCR alerted human rights advocates in the United States of his arrival here.

A Lawyers' Committee volunteer attorney took the case shortly after the ship docked at the port of Oakland in California. The events leading to his asylum interview, two months after his ship arrived in the United States, were fraught with numerous complications that impeded his ability to fully present his claim. These difficulties arose from the political and cultural circumstances under which the refugee had lived as well as the refugee's own difficulty in understanding U.S. institutions after escaping a totalitarian society.

The client came from a peasant family and was the first in his family to attend a university. He became interested in protests against the government because he recognized the validity of the criticisms voiced by the dissident organizations.

The volunteer attorney estimated that he and the refugee spent a total of twelve hours in interviews. They met for days on end, in order to produce a declaration of the refugee's asylum claim. Initially, the refugee answered questions in a laconic manner and did not want to give details. The volunteer, who had studied both the Chinese language as well as its culture, thought that the refugee was reticent because in China, revealing such details is dangerous. It took hours to pry details out of the man.

The volunteer noted that a serious misunderstanding for people moving between Chinese and American cultures is that in China, it is necessary for many--especially those who oppose the government control--to lie in order to stay alive. The volunteer said that his client lied to Chinese officials and others when he denied that he had taken part in anti-government protests. He had, in fact, taken part in them. When he was released from jail, he had to lie further about his background in order to avoid further persecution. Then, the refugee was thrown into the U.S. situation where truth is key. The refugee had no notion of an independent attorney helping him to present a true claim. In his experience, everyone worked for a government where there is an approved line to follow rather than an independent truth. The refugee remained hesitant to speak for himself and speak independently. It took many interview hours for the refugee to understand the U.S. concept of objectivity. The client's case is still pending.



Mr. MAZZOLI. Professor Vaughns.

**STATEMENT OF KATHERINE L. VAUGHNS, PROFESSOR, SCHOOL OF LAW, UNIVERSITY OF MARYLAND**

Ms. VAUGHNS. Yes. Good afternoon, Mr. Chairman and members of the subcommittee.

Mr. MAZZOLI. Good afternoon.

Ms. VAUGHNS. I had to make sure it was afternoon.

I want to thank the subcommittee for inviting me to speak today in connection with two bills. I am sorry, Mr. Schumer, I have not had an opportunity to look at your bill. However, I have heard enough about what is in it, and I think I can make some comments regarding it.

In the interest of full disclosure, I had another lifetime prior to entering the academy, and that was a practicing lawyer in Los Angeles, as an assistant U.S. attorney in the Central District of California, I did handle immigration matters at that time. However, that was prior to the controversies surrounding asylum taking on its present dimensions. Therefore, my experience as a practitioner in asylum matters is quite limited.

As an academic, I have been studying it, if you will, and teaching it for the last 7 or 8 years. I am compelled by the humanitarian aspects of asylum and refugees to be concerned about any measures that may dilute or take away the procedural safeguards that are presently in place.

I think it is very important that these safeguards be maintained, but I am enough of a pragmatist to believe that the time has come for the restructuring of the asylum process. At the time Congress enacted the Refugee Act of 1980, I believe, the statutory asylum provisions were already out of date, because the focus was on the overseas refugee program.

I think the comment that Mr. Schumer made about having arrived at a time where we should narrow the asylum process, but expand the refugee process goes to the core of the issue.

The present asylum controversy is about the process which permits people who are outside of the regular immigration selection system or the regular overseas program to, in effect, obtain or gain, or at least seek, immigration status while physically present in the United States.

Numbers are a problem. I think if we did not have the large numbers of asylum-seekers here today, regardless of what application filing figures you want to settle for the 1980's, we might be having a different debate right now.

It is unfortunate that the time to see the current asylum regulations fully implemented in a functioning process may have run out. However, the system, in effect, it seems to me, is already bankrupt. A more comprehensive legislative reform program, in terms of dealing with the problem, seems to me the way to go at this juncture.

I have already submitted my written testimony, and I do tend to favor Representative Mazzoli's bill. However, I am persuaded by some of the earlier comments made today regarding Mr. McCollum's bill, that that portion of it which operates like a screening device, as opposed to an exclusion device, may be acceptable. Again, I still have concerns about any legislative measure that



seems to focus on a problem that may be isolated or has the potential of being transitory.

Also, further consideration should be given to the agency's ability, assuming requisite or adequate resources were available, to attempt to address the problem first. That is why I was impressed with Mr. Becerra's observation about what happened in Los Angeles when additional detention facilities were in place and the problem of asylum-seekers arriving without proper documentation seemed to evaporate.

Of course, the agency's response is that the phenomenon merely shifted to another place. So that is why my recommendation still remains that a more comprehensive approach to the problem seems to be appropriate.

However, I start, as I indicated in my statement, from the premise that there are more refugees or asylum-seekers deserving of a safe haven or political asylum in this country than this body or this Government is prepared to admit. That is just a fact of life.

Once you make that decision that we do not have open borders, then you go about deciding the best way to, in effect, accord immigration status or asylum status to those who do manage to come to this country or who manage to participate in the overseas refugee program.

My only concern with respect to Mr. Mazzoli's bill is that there seems to be no fail-safe mechanism in place with respect to those asylum-seekers who fail to make the affirmative step of applying for asylum at or shortly after entry and who find themselves in deportation proceedings, but who, if given an opportunity, would be able to demonstrate a bona fide persecution claim or a claim for asylum. At that point, Mr. Mazzoli's bill fails to indicate what would be done in terms of assuring that the individual would not be returned to a country where he is more likely than not to be persecuted.

Thank you.

Mr. MAZZOLI. Well, thank you very much, Professor. I appreciate your suggesting that there are, obviously, many aspects of my bill that I would welcome change in and modification of, and that is certainly one of them.

[The prepared statement of Ms. Vaughns follows:]

STATEMENT OF KATHERINE L. VAUGHNS<sup>1</sup>SUBMITTED TO THE HOUSE SUBCOMMITTEE ON  
INTERNATIONAL LAW, IMMIGRATION AND REFUGEES

Tuesday, April 27, 1993, at 9:00 a.m.

EXECUTIVE SUMMARY:

The very nature of the asylum controversy centers on the ability of an asylum seeker to obtain lawful immigration status outside the regular immigration or refugee selection and pre-screening systems. No statutory mechanisms are thus in place presently to accommodate a system of asylum adjudication which handles large numbers of applications filed by individuals who do not otherwise possess lawful immigration status. Any legislative reform proposals should adopt a fundamental approach in addressing the issue of asylum abuse. Legislation which responds only to a particularized problem may not provide a lasting resolution. Moreover, administrative options may be available to address immediate problems in particular locations, such as the one identified at JFK airport in New York City.

Specifically, H.R. 1355 focuses too narrowly on exclusion proceedings. It creates a particularized ground of exclusion for "admissions fraud" which is already covered under existing law. Also, H.R. 1355 appears to dilute procedural safeguards for those individuals who present themselves to immigration officers at ports of entry. For example, the statutory bar to asylum relief based on the specific circumstances of an alien's arrival with false or without documents would not be a satisfactory policy. First, it may prevent an adjudicating officer an opportunity to weigh the totality of the circumstances and grant asylum relief to a bona fide refugee. Second, it may cause the present phenomenon at major international airports to shift to other locales at which little or no control by the INS is feasible.

H.R. 1679, on the other hand, is a legislative measure which is directed at the crux of the problem, the need for greater control in the process. It attempts to create a tighter structure for adjudication by (1) requiring an affirmative obligation to apply within a statutory period of time and (2) re-vitalizing the nonrefoulement relief, which has a higher burden of proof than asylum claims. It appears to do so without unduly compromising procedural safeguards and preserving this country's mandatory international obligation of nonrefoulement. This legislation is not without its problems, however. The exception provision is unduly limited in scope and appears to cut-off an opportunity to apply for withholding in deportation or exclusion proceedings.

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## I. INTRODUCTION

This statement is submitted in connection with the hearing on H.R. 1355, the "Exclusion and Asylum Reform Amendments of 1993," and H. R. 1679, the "Asylum Reform Act of 1993," scheduled by the Subcommittee on International Law, Immigration, and Refugees, of the House Committee on the Judiciary.

## II. OVERVIEW

I start from the premise that there are many more foreign nationals with *bona fide* claims to refugee status, deserving safe haven or political asylum in the United States, than this country is prepared to admit under the present immigration scheme. Congress long ago abandoned an open-border policy of lawful immigration.<sup>2</sup> Not surprisingly, however, the demand for immigration to this country in general has increased exponentially in recent years and far exceeds the numerically-restricted categories presently codified.<sup>3</sup>

In contrast, the availability of in-state asylum relief --outside the regular immigration system (including the overseas refugee program)-- fosters uncontrolled immigration of asylum-seekers who gain entry undetected or seek to enter this country at its borders without advance screening. Professor David A. Martin aptly refers to asylum as a "loophole" in the current immigration selection system.<sup>4</sup> Asylum has become controversial precisely because the United States has become

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<sup>2</sup> See Elwin Griffith, Deportation and the Refugee in TRANSNATIONAL LEGAL PROBLEMS OF REFUGEES, 1982 MICH. YEARBOOK OF INT'L LEGAL STUDIES 125 (describing a time when immigration in this country was unrestricted and, therefore, classification as refugee or immigrant was unimportant). But see Al Kamen, INS's Unofficial Open Door: Illegal Aliens Swamp N.Y. Holding Capacity, *Washington Post*, Jan. 27, 1992, at A1, col. 1 (reporting on the recent phenomenon of foreign nationals arriving at U.S. international airports without proper or false documentation).

<sup>3</sup> See, e.g., Alan K. Simpson, Legal Immigration Reform, 25 San Diego L. Rev. 215, 217-218 (1988)(noting a statement about the demand for immigrant visas to the U.S. far exceeding any conceivable supply as an indication of the reality of the current refugee crisis).

<sup>4</sup> David A. Martin, The Refugee Act of 1980: Its Past and Future, in TRANSNATIONAL LEGAL PROBLEMS OF REFUGEES, 1982 MICH. YEARBOOK OF INT'L LEGAL STUDIES 91, 112 (describing how asylum "constitutes a wild card in the immigration deck"). See generally David A. Martin, Reforming Asylum Adjudication: On Navigating the Coast of Bohemia, 138 U. PA. L. REV. 1247, 1267-1270 (1990)(discussing asylum as a loophole in the regular immigration selections system and the need for control).

a country of "first asylum."<sup>5</sup> I remain convinced that Congress never intended an avenue for lawful immigration to operate in the fashion that asylum adjudication presently does.

Congress last considered the fundamental aspects of the asylum process in 1980. In drafting the Refugee Act of 1980, Congress created an orderly mechanism for the operation of the overseas refugee program. At the time of the Act's passage, the United States was still a country of second asylum;<sup>6</sup> therefore, little attention was paid to the then newly-created statutory provisions enacted for in-state asylum relief. Within a few months after passage, however, greater numbers of asylum-seekers from the Caribbean area began to arrive in South Florida. Then, a few years later, ever-increasing numbers of asylum-seekers from Central American countries began to dominate the applications filed in Texas and California. More recently, attention has been focused on the once anticipated influx of large numbers of Haitian refugees (again into the South Florida area). But the concept of asylum-seekers today has taken on a decidedly more global character with the daily arrivals of foreign nationals at U.S. airports (principally JFK Airport in NYC) coming directly from distant countries to claim asylum.

Although the United States is now a country of first asylum, no statutory mechanisms are presently in place (thus causing the Immigration and Naturalization Service ("INS") to rely on such highly controversial policies like indefinite detention and interdiction<sup>7</sup> as functional equivalents) to pre-screen the vast numbers of asylum-seekers and therefore regulate their admission. Once they are physically present in the United States, undocumented status notwithstanding, this nation's

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<sup>5</sup> "First asylum" refers to countries to which large numbers of refugees arrive directly. See generally G. Melander, Basic Differences in Refugee Policy in Western Europe and North America, 9 IN DEFENSE OF THE ALIEN 97, 97-98 (L. Tomasi ed., 1986).

<sup>6</sup> The concept of "second asylum" describes situations in which individuals seeking asylum to this country apply while in another country where they are screened prior to an orderly entry here, as in the context of the U.S. overseas refugee program under INA § 207, instead of traveling directly to apply while in the United States (i.e., by-passing the overseas operation).

<sup>7</sup> A program of Coast Guard interdiction of boats sailing between Haiti and the United States was inaugurated in October 1981 by the Reagan Administration along with its new detention policies aimed at restricting the flow of asylum-seekers into the United States. T. ALEXANDER ALENIKOFF & DAVID A. MARTIN, IMMIGRATION PROCESS AND POLICY 836-837 (2d ed. 1991).

obligation to honor its international commitment to nonrefoulement<sup>8</sup> should remain paramount. Thus, a present imperative exists for a legislative proposal that will impose some order on an adjudicatory system that appears to be administratively chaotic, at least at some ports of entry.

Equally important to this discussion is the ever-present danger that the public at large will demand more restrictive refugee policies. Recent media reports suggest that a critical juncture in the public debate over asylum has been reached.<sup>9</sup> Added to this is apparent public concern over the widely publicized events relating to the CIA employee killings in January and the New York World Trade Center bombing in February of this year. These two events involved criminal suspects who happened to be foreign nationals.<sup>10</sup> It should be underscored, however, that although these events may have drawn renewed attention to the on-going concern about potential asylum abuse, particularly at major international airports, these particular suspects appeared to have entered this country lawfully under the regular system of immigration. Thus linking the two isolated events with the current airport phenomenon involving global asylum-seekers would be unfortunate and would mis-characterize the essential nature of the asylum controversy. Moreover, these two events underscore, perhaps, a more fundamental problem in the administration of U.S. immigration laws, to wit, a lack of sufficient resources.<sup>11</sup>

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<sup>8</sup> "Nonrefoulement" (translation "no return") is a technical term for refugee protection. It derives from Article 33 of the United Nations Convention relating to the Status of Refugees, done July 28, 1951, 189 U.N.T.S. 137, protecting individuals against return to a country "where [his or her] life or freedom would be threatened on account of his [or her] race, religion, nationality, membership of a particular social group or political opinion." See generally GUY S. GOODWIN-GILL, *THE REFUGEE IN INTERNATIONAL LAW* 69-100 (1983).

<sup>9</sup> Two recent examples are the recent CBS "60 Minutes" segment entitled HOW DID HE GET HERE? involving the asylum problem at JFK which aired March 14, 1993 and the NBC NEWS broadcast of the BROKAW REPORTS on March 28, 1993 entitled IMMIGRATION--THE GOOD, THE BAD, THE ILLEGAL.

<sup>10</sup> FBI Official Thinks New York Bombing Was the Work of Large Terrorist Group, *The Wall Street Journal*, March 10, 1993.

<sup>11</sup> The Subcommittee on Information, Justice, Transportation and Agriculture of the House of Representatives' Government Operations Committee addressed this particular question, among other immigration issues, at public hearings last month. Reported in Congressional Panel Probes INS Management, Other Immigration Issues, 70 *Interpreter Releases* 449 (1993)(congressional subcommittee heard testimony on March 30, 1993 at which many argued that management and efficiency problems continue to hamper the INS).



Whatever the impetus, now is the time to enact legislation designed to gain control of a system which seems to be burdened with intractable problems. Any legislative reform measure, however, should not dilute the current procedural safeguards for deciding asylum claims. For a *bona fide* asylum-seeker, the stakes are simply too high. Moreover, the international obligation of refugee protection mandates that this country honor its agreement of "no return" once a qualified alien reaches its borders. In such matters, it is preferable to err on the side of caution. But that does not mean, necessarily, that we should continue an asylum process which acts more like a magnet for those who have not as yet reached our borders, even if they possess qualified asylum claims, and therefore an incentive to come here at all costs. This is particularly so if the available asylum data were to demonstrate that a significant number of those seeking asylum eventually do not qualify under the statutorily-prescribed criteria.

### III. THE LEGISLATIVE PROPOSALS

The two bills submitted to me for comment present two distinctly different approaches. One bill --H.R. 1355-- is too narrowly focused on exclusion proceedings and takes a decidedly reactive approach to the specific situation recently detailed in the media. The other measure --H.R. 1679-- attempts to tighten up the process, recognizing that something must be done to lessen asylum's magnet effect, while still preserving important procedural safeguards. It thus represents an inevitable direction in addressing the asylum controversy.

My specific impressions of both of them are as follows:

H.R. 1355, as suggested above, aspires to do too much in a narrowly defined context. The goal is to severely limit opportunities for asylum abuse with the current situation at major U.S. airports in mind. However, such a phenomenon could change once appropriate preventive measures are in place. And concerning an amendment to the INA to create a specific exclusion ground to address this particular scenario, this aspect of the reform measure seems unnecessary. The current immigration law already provides for the exclusion of aliens who arrive without proper documentation or present fraudulent papers at U.S. ports of entry.<sup>12</sup> If INS were to report difficulty in excluding aliens in these types of situations then, perhaps, a clarifying amendment would be in order. Otherwise, the statute should remain as presently drafted.

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<sup>12</sup> The INA statute specifically provides for "admissions fraud." See INA §212(a)(6)(C)(i): see also INA § 212(a)(7) (Documents requirements for admission as immigrants or nonimmigrants.)

My next concern relates to the provision to exclude aliens who seek asylum but have transited other countries prior to coming here. In Matter of Salim, 18 I.&N. Dec. 311 (BIA 1982), the Board of Immigration Appeals ("Board") determined that although the alien in that case had established the requisite probability of persecution in this homeland, he would nevertheless be denied asylum in the exercise of discretion because he had, in effect, committed "admissions fraud." The specific basis for the discretionary denial of asylum relief was attributed to the alien's "fraudulent avoidance of the orderly refugee procedures this country has established." Id. But in a later decision in which the alien had similarly committed "admissions fraud," The Board modified its position finding that it had placed too much emphasis on the circumvention of orderly refugee procedures factor in the earlier Salim case. Matter of Pula, 19 I.&N.Dec. 467 (BIA 1987). In the latter case, the Board granted asylum relief after balancing the countervailing equities and circumstances surrounding the acts which led to the "admissions fraud" ground of exclusion.

A statutory bar preventing an adjudicating officer from assessing the totality of the circumstances in determining whether the alien's manner of flight (in fleeing persecution) to the United States was justified would not be wise immigration or refugee policy. Like the Board's rejection of its earlier consideration of false documents as a sole discretionary factor for denying asylum relief, Congress should not adopt a counter approach. An automatic bar in the exclusion context discriminates unfairly and indirectly favors similarly situated asylum-seekers (i.e., those without proper documentation) who manage to enter without inspection. H.R. 1355 thus seems to be unduly harsh insofar as its treatment of those who enter via airports as compared to others who enter surreptitiously across U.S. borders from Canada or Mexico without detection. It could conceivably encourage more entries without inspection.

Ironically, the U.S. government ostensibly has greater control of the process when excludable aliens present their asylum claims at a port of entry than it does when asylum-seekers enter undetected. Further, nothing in the INA statute requires INS to parole asylum-seekers into this country or issue work authorizations who present themselves at ports of entry. INS does so, apparently at JFK airport, because of a lack of detention space.<sup>13</sup> If INS had sufficient resources to detain excludable aliens entering the country at major airports pending exclusion

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<sup>13</sup> As reported in a recent article:

...The detention center at JFK airport has a maximum capacity of 100 beds and only 12 to 15 vacancies for some 1,300 new excludable aliens every month.

Ira H. Mehlman, The New Jet Set, *National Review*, March 15, 1993, at p. 40.

proceedings, consideration of an asylum application and, if found ineligible, expulsion, perhaps drastic statutorily-created measures would not be needed.<sup>14</sup>

H.R. 1355's attempt to expedite the asylum adjudication process, particularly at ports of entry is, nonetheless, understandable. Case law does support the proposition that whatever statutory exclusion procedures Congress authorizes "as far as an alien denied entry is concerned," is constitutionally sufficient. *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950). And although the requirement of a "credible fear" of persecution is, presumably, a higher burden than the current "non-frivolous" requirement for asylum applications, which triggers work authorization for applicants who present them, an international airport is no place to make these kinds of determinations. Also, the measure does not appear to afford the alien any opportunity to avail himself or herself of the privilege of counsel for representation in these matters.

In short, this particular bill focuses too narrowly on one aspect of the problem. Moreover, with statutory provisions already in place to cover the "admissions fraud" exclusion ground, other administrative options should be pursued first. In that regard, it appears that INS lacks sufficient resources to implement the current system more efficiently and/or effectively, at least at certain major airports. So, until other administrative options to expedite the process of adjudication in exclusion proceedings are studied or explored, I am reluctant to recommend the codification of unduly harsh measures (which may not be necessary).<sup>15</sup>

H.R. 1679, on the other hand, appears to be legislation which aspires to get at the crux of the problem. Its goal is to tighten up the present asylum adjudicatory structure without unduly compromising procedural safeguards. As long as adequate enforcement at the border remains problematic, a logical alternative would be to shift the onus on the applicant to come forward at the earliest opportunity. H.R. 1679 does this with its proposal of an affirmative obligation requiring asylum seekers to present their claims to the appropriate immigration officials within a particular period of time after entry into this country.

As previously discussed above, an asylum application affords an alien who is otherwise ineligible for regular immigration an opportunity to obtain lawful

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<sup>14</sup> For example, Canada deals with the problem of asylum abuse involving document fraud or fraudulent admissions by doing a better job of advance screening prior to entry to avoid administrative chaos at the airports. *Id.* at 41.

<sup>15</sup> Moreover, it appears that the hard data needed to assess the true picture of this particular phenomenon is not yet available. *Id.* at 40-41.

immigration status while in the United States. H.R. 1679, although not without its own problems, is a suitable approach to the inherent problems associated with this very nature of the asylum process: an opportunity to apply for lawful asylum without advance screening. As such, it is an attempt to bring some modicum of orderliness to a process that admittedly has the potential for considerable abuse. Further, H.R. 1679 appears to equalize the opportunity for asylum no matter how the undocumented alien physically enters the country.

H.R. 1679 also revitalizes the claim of nonrefoulement which has been rendered non-viable, as a practical matter, in light of the Supreme Court's decision in *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987). In *Cardoza-Fonseca*, the Court lowered the burden of proof for aliens seeking asylum under INA § 208(a). This decision occurred in the wake of a prior decision of the Court which had sanctioned the use of the higher, more restrictive burden of proof in nonrefoulement cases. See *INS v. Stevic*, 467 U.S. 407 (1984). Asylum is a discretionary determination. Thus, the availability of such relief is not mandated under international agreement. It remains for the host government to decide the circumstances under which more permanent relief will be granted. Therefore requiring, as H.R. 1679 does, the establishment of nonrefoulement relief as a pre-condition to lawful asylum status, appears to be a policy choice that may be necessary, given the current demands for immigration. This is indeed a difficult choice to make but Congress is the better forum in which to debate hard choices than in the courts or in the executive branch.

This legislation, however, is not without problems. First, I have a concern about the reasonableness of a seven day time period within which to come forward and file a notice. (How reasonable this time frame is depends on how quickly an alien entering undetected will be apprised of this affirmative obligation.) But even assuming that seven days is deemed a reasonable period, how is the agency realistically going to determine actual compliance?

Second, the provision for exceptions appears to be unduly limited. As presently drafted, the only recognized exception is the one which covers "changed circumstances." Presumably, this situation would arise when changed circumstances in the government in the alien's home country occurred after the statutory period. But what about the alien who fails to file within the statutorily-prescribed period but finds himself or herself in deportation proceedings and if allowed the opportunity to establish nonrefoulement would be able to do so? To return such an alien to his or her homeland would be contrary to our international obligation of non-refoulement. On the other hand, attempting to carve out a multitude of exceptions could operate as a dis-incentive to come forward and seek nonrefoulement within the statutory period and would create another loophole in the process at the back end.

The dilemma is obvious. If there were an exception which permitted an explanation for failure to comply in a timely fashion for the newly-created relief, it is possible that such a provision could become the loophole in the new procedure much the way in which asylum operates as the loophole in the regular immigration system. A possible alternative would be to make nonrefoulement nonetheless available in deportation or exclusion proceedings without the opportunity to seek affirmative asylum status. There are problems with this proposal as well because of the prospect of having a substantial class of aliens without lawful status. But it is unlikely that this country can comply with its international obligation of nonrefoulement unless a fail-safe provision is built into the statutory provisions governing deportation and exclusion proceedings for those individuals who could establish nonrefoulement entitlement but failed to apply for such relief affirmatively within the statutory period.

#### IV. CONCLUSION

Based on the foregoing reasons, I recommend further consideration of H.R. 1679 as a realistic approach to addressing the asylum abuse problem with particular attention to creating more viable exceptions or, at least, retaining the opportunity to apply for the present withholding of deportation relief in deportation or exclusion proceedings.



Mr. MAZZOLI. Mr. Norton.

**STATEMENT OF RICHARD NORTON, MANAGING DIRECTOR,  
FACILITATION, AIR TRANSPORT ASSOCIATION**

Mr. NORTON. Thank you, Mr. Chairman. It is a pleasure to appear again, not only on behalf of the Travel Industry Coalition that Mr. Bonaventura also represents, but also to address some of the airline-specific issues that pertain directly to the legislation under consideration by the subcommittee.

I will limit my comments, because of the late hour, to some very specific things. First of all, I want to show our full support for 1153.

The immigration laws, the inspection laws are 40 years old. Nobody has touched those. The problems we are dealing with are much more contemporary than that.

The user fee has gone a long way to resolve some of those problems, but it is not enough. It has not changed the basic procedures that have been in existence all that time. It can make a real difference. Automation is one of them. An example I have here is this \$4,000 machine that sits at over a thousand check-in counters around the world.

[Machine displayed.]

Mr. NORTON. We have installed these, with the help of the U.S. Customs Service. However, we cannot take advantage of them unless the laws are changed.

INS can save millions of dollars in data entry cost alone. Our security procedures can be enhanced measurably; but again, the laws have to catch up with this capability that we now have.

Much has been said about preinspection today. We certainly fully support that element of H.R. 1153.

For the record, Congressman Schumer asked why 124 people had to be stationed in London. That is 6 percent of INS's work force. Eighteen percent of INS's work comes from London.

Therefore, even if it was triple the cost, just the enforcement benefits alone would pay dividends for the preinspection program. Therefore, we fully support preinspection—principally as a facilitation program, not as an enforcement program, for reasons I can elaborate later, if you would care to inquire.

We join the states and INS in supporting the visa waiver program. I have addressed the automation issues that we think this bill will help us with. Certainly, mandating the fair and fast treatment of U.S. citizens is another important aspect.

I would like to call your attention to the problem we are having, however, with inadmissible passengers, and the role that we play in this whole process. It is one that I think has been overlooked. We would like to suggest changes to 1153 and to either/or 1679 and 1355 to address this problem.

It is a matter of grave concern to us. It is costing us a lot of money—\$30 million a year in inadmissible passenger fines. That is principally because the law says we should have checked for a passport and visa. It is much more complicated than that.

We are checking for them, and then they are immediately being destroyed or passed off through a courier in a very sophisticated scheme of smuggling people to the United States. This is something

that was not anticipated in 1952, and we think Congress must deal with.

It is not only costing us a lot of money, but it is costing the Government control problems. We talk in terms of 100,000 asylum applicants,  $x$  number of inadmissible aliens each year. We have just begun to scratch the surface of this problem.

Europe started seeing this problem years ago. Sweden last year admitted the equivalent of 1 percent of its population as asylum claimants. If the United States had a problem of similar scope, that is 2.5 million people. That is what the United States would have if the same proportion was applied to what the Scandinavian countries had to endure last year.

However, that is not getting into the benefits or the correctness of the applications that these people have made, whether or not they are bona fide or not. However, the problem is out there and waiting. We have to deal with the legitimate applicants and the illegitimate ones at this time.

Our problem is that we feel that we are left out of the equation. A perfect example is this brandnew U.S. passport.

[Passport displayed.]

Mr. MAZZOLI. You mention that in your statement.

Mr. NORTON. I do not know if anybody has seen this before, but this is now being issued by the State Department. If our people would have seen a green passport instead of a blue one, they would have questioned whether or not somebody had committed a cheap forgery. That is precisely what, I think, it is at this stage.

We found that using kitchen and hobby tools, the data and photo can be altered without visibly damaging the lamination of this passport. Using a print shop, the entire page can be forged or changed. The airlines are helpless against fighting this problem.

I have in my hands two examples of documents, that you are welcome to examine, which have a device that is called a hologram, which is suppose to be the "be-all and end-all" of fraud prevention. One of these is fake. One of these is genuine. There are virtually undetectable differences.

[Documents displayed.]

Mr. NORTON. We recommend several steps in combating this problem. First is a compliance program so that carriers are part of this loop. There are 140 to 150 jump off points to the United States out there. Preinspection may be in place at 2, 3, 5 or 10 of them. That is as far as that program can go at preventing the problem.

I can offer you much anecdotal evidence, Mr. Chairman, that one of the favorite ports for citizens of China to jump off into the United States is out of Rio de Janeiro.

If you were to take the three or four biggest countries that give us problems, simply stationing officers in Karachi and New Delhi is not going to solve the problem. They are going to come in from virtually every point.

That is why the carriers have to be roped into the equation. We have to know what the Government wants. We have to be told what they expect us to do, and the analogy is there.

The FAA has a great program that stopped in-flight terrorism. Custom Service prevents the smuggling of drugs aboard commercial aircraft. It is all based on telling the airlines what they are ex-

pected to do, and rewarding them for doing it. In our case, that is a break on fines and mitigation provision on that \$3,000 fine, so that these efforts are recognized.

We think that it is important that the loophole also be closed. Mr. McCollum, I noticed that your bill addresses the problem with people who arrive with forged, counterfeit, or altered documents. We have to look at how we are going to solve the problem with people who arrive with no documents.

They are too good. They pass our detection. They are then passed onto someone else. They are later recycled through the system. The people arrive, and nobody knows their identity.

They have not substituted their real name on a forged document. They have invented something and recycled it through the system, and we have no idea who they are. That has got to be addressed. The European Community has approached this problem by at least tentatively agreeing that the lack of documents can lead to a negative factor in the adjudication of an asylum claim.

Mr. MAZZOLI. Is that like a prima facie case right off the bat, that is something else?

Mr. NORTON. Exactly, and we think that the U.S. Government has to very carefully look at this recent information.

Mr. MAZZOLI. Is it your experience that when they show up with no documents, that means that they have excellent looking documents at the other side?

Mr. NORTON. Oh, yes. I have seen them myself. In fact, I have examined some PRC documents in Rio that we had no idea—

Mr. MAZZOLI. Those go back into the system, and they are used for somebody else?

Mr. NORTON. Yes. They board the aircraft with very good documents, and they are lifted by the courier, taken back to Bolivia, where they are redone for a new group.

Mr. MAZZOLI. So, based on this worldwide experience that you have in the European Community, when you show up with no documents that, in itself, is a kind of give away. It is part of the profile of someone who is part of a syndicate or part of a scam, probably.

Mr. NORTON. Yes.

Mr. MAZZOLI. Thank you. Another example is where you fish them out of the restrooms, too. I understand. We have heard that. That is at least one element of the profile of someone who is getting in here through a conspiracy. Thank you.

Mr. NORTON. In summary, we fully believe that 1153 is the best means for removing the impediments that are there now. I would not want to deemphasize that part of our testimony.

If we do not make the changes recommended in 1153, we are doomed to a sort of Maginot line strategy, as I described it last year, where we pretend that we can do everything in our ports of entry to solve this problem, and we simply cannot.

It is important for our economy, and it is important for our industry to be able to make headway. These changes are long overdue.

Thank you, Mr. Chairman.

Mr. MAZZOLI. Thank you very much, Mr. Norton. I appreciate it. [The prepared statement of Mr. Norton follows:]

Statement of Richard E. Norton  
Managing Director, Facilitation  
Air Transport Association of America  
Before the Committee on the Judiciary  
Subcommittee on International Law, Immigration and Refugees  
U.S. House of Representatives  
Concerning Travel Industry Legislative Proposals and Air Transport Industry Issues with the  
Immigration and Naturalization Service  
April 21, 1993

My name is Richard E. Norton, and I am the Managing Director of Facilitation for the Air Transport Association of America (ATA). ATA represents the 18 carriers that handle over 95 percent of the scheduled commercial airline traffic in the United States, and that provide air service to over 80 foreign countries. ATA and its members deeply appreciate this opportunity to again express our views on immigration issues that affect our industry. We view this as a key step in our efforts to gain support for legislation that would streamline tourism to the U.S., and to draw attention to some of the policies of the Immigration and Naturalization Service that can be corrected by statute.

### THE NEED FOR LEGISLATION

Last year ATA testified before this committee about the urgent need to modernize immigration laws. Specifically, we advocated the adoption of efficiency-oriented, revenue-neutral changes to the Immigration and Nationality Act (INA) that would speed up airport inspections and improve control of our borders. ATA was joined in this endeavor by a



coalition of groups that is fighting to protect what has become this country's biggest export: the \$53 billion tourism industry. The interests represented along with ATA -- the American Association of Airport Executives, the Airports Association Council International, and the Travel and Tourism Government Affairs Council -- remain convinced that these progressive changes to the Act must be the next stage of our joint efforts to protect the positive trade balance that this sector generates.

Subsequent to the March 1992 hearing, the subcommittee addressed this need by passing H.R. 5555. While that legislation failed to pass the Senate, the need for these reforms persists. The coalition believes now more than ever that we must act to give INS the tools it needs to unsnarl the slow, antiquated border inspection procedures that undermine the image of the U.S. as a desirable destination, divert resources from efforts to interdict undesirable entrants and inhibit the industry's ability to successfully compete in a market that is extremely sensitive to perceptions of inconvenience and inhospitality. We are convinced that the latest version of this legislation, H.R. 1153 as introduced by Rep. Charles Schumer, will accomplish these goals.

## BACKGROUND

Several years ago the industries involved in the coalition worked hard to give INS the resources it needed by supporting the Immigration User Fee. The success of that effort is



well documented; what was just seven years ago an under-funded, \$40 million appropriation has grown into a huge program that takes in over \$200 million per year in spendable revenue. In 1991 we pressed INS to spend that money on hiring additional personnel, which resulted in a 30 percent increase in the Service's inspector work force -- but which has not adequately responded to current needs.

Still missing, however, are the legislative reforms that are needed to make the inspections process work efficiently. Other nations have been quick to realize that tourists can be welcomed with painless, expedient entry procedures that help secure a greater share of the international travel and tourism market but do not jeopardize enforcement. In order for the U.S. Government to accomplish the same result, we believe legislation is absolutely necessary. The existing framework of the INA allows little room for modern innovation. The Service is left with a self-defeating strategy that is confined only to advocating more user fees and staff increases. If all of those involved are constrained to this old framework, it means that no airport can be big enough and no staff large enough to accommodate the expected doubling of international traffic to the United States within the next decade.

Instead of facing this bleak prospect, the industry endorses changes to the law that will allow citizens and visitors to be expedited without jeopardizing the government's enforcement mission. Our recommendations are directed at helping INS to perform its tasks more efficiently, providing the tools to protect our borders and facilitating air passenger entry into the country. These laws -- most of which have been unchanged for four decades -- are ripe

for the sorts of changes that will allow INS to join the ranks of other enforcement agencies that are legally able to take advantage of modern technology and up-to-date law enforcement techniques.

This subcommittee is well aware that it has been all too common for U.S. citizens and foreign visitors to be greeted upon arrival here with an arduous process that can take several hours. Lengthy waits aboard aircraft are too often followed by hour-long lines in crowded arrival halls, as passengers endure a time consuming, labor intensive immigration inspection. This situation is caused by the fact that immigration processing requires all passengers to be handled identically, even though less than a fraction of one percent are of interest to federal agencies. Such a practice induces a vicious circle of wasted resources. Since INS is unable to adopt better methods used by sister agencies, it instead must rely on work force increases alone to accomplish its mission. Airport facilities, peak arrival periods, seasonal traffic and around-the-clock operations are factors that make staffing levels the least efficient of tools -- but the only one available under present guidelines and statutes.

Airlines, airports and the government have anticipated the advent of a more contemporary inspection system by already having invested millions of dollars in hardware and software that can help INS automate the routine tasks that frustrate efficient passenger handling (the equipment, in the form of specialized document readers linked to the Customs/INS shared data base, automatically captures relevant information from travelers' passports; the devices are now in place at virtually all immigration booths here, and at many

airline check-in counters abroad). Clearly the stage is set for new, efficient techniques to take over -- when the necessary changes are made to the 40-year-old Act.

Legislation would have the added benefit of bringing the U.S. into closer compliance with the international standards it sponsored in an annex to the 1944 Convention on International Civil Aviation (the "Chicago Convention"), which is the principal instrument of international aviation law. In 1988 the United States government offered an amendment to Annex 9 of the treaty calling for contracting states to establish as a goal the clearance of air passengers through the entire federal inspection process within 45 minutes of arrival. Under this amendment, all passengers requiring not more than the normal inspection at international airports should move through all inspection agencies in less than 45 minutes regardless of aircraft size and scheduled arrival time. The U.S.-sponsored amendment was adopted on December 4, 1989.

#### Necessary Legislative Changes: The Advantages of H.R. 1153

We believe that H.R. 1153 overcomes these problems by offering the following solutions:

- It expands the INS preinspection program to additional high volume overseas sites, thus reducing the burden placed on domestic arrival halls;

- It supplements preinspection with a carrier consultant program that will allow INS to provide on-site expertise to airline employees at scores of overseas embarkation points;
- It makes the visa waiver program permanent for all eligible countries, thus encouraging a higher level of tourism from major source countries. Furthermore, it eliminates the cumbersome visa waiver form that slows down passenger inspections;
- It frees inspectors from time-consuming clerical tasks and saves resources by redefining the "manifest" provision. This major change will allow airlines to submit passenger information in automated form, facilitate broader use of "machine readable" documents by other countries, and save the government millions of dollars in data entry costs;
- It modifies the definition of "inspection" to clearly allow the use of electronic data and other forms of scrutiny as the basis for the admission of passengers. This change removes language that appears to call for a personal interview of all arriving passengers, and replace it with more contemporary tools that can be used for determining admissibility;
- It mandates that U.S. citizens be given expedited treatment by INS;

- It ensures that all inspections are completed within the 45 minute time frame called for by the Chicago Convention.

Taken as a whole this legislation will add a forceful, effective set of tools to the Immigration and Nationality Act. The industry believes that H.R. 1153 will stimulate a wide array of new programs that will act in concert to expedite airport admissions processing.

### INADMISSIBLE PASSENGERS

The enactment of H.R. 1153 in its present form will leave one critical problem unsolved. It is a matter of grave concern, since it affects carrier revenues and undermines the government's system of immigration control. We are referring to the growing number of passengers who are using the international commercial air transportation system to circumvent immigration laws. The primary culprits are those who board our flights bearing what appear to be proper documents, and then either destroy their passports or pass them off to smugglers. This is no small-scale issue; in one recent month, over 1500 illegal immigrants arrived at New York/John F. Kennedy International Airport using this technique; hundreds more do the same at other airports around the country. INS ends up with an unidentified person on its hands, and the airlines are fined and illegally forced into the role as jailers of these alleged asylum seekers. One leak in the system is costing the industry at least \$30 million per year. The impact on the INS budget and on an orderly system of immigration is far greater: it has



been through use of this elementary means that terrorists and other criminals can penetrate the system with impunity.

To halt this pattern of abuse, the industry strongly recommends that the government rethink its strategy on the deterrence of this traffic. Instead of relying on after-the-fact fines, we are convinced that airlines must be made partners with INS in a program that provides carriers with the guidance and incentives to keep unscrupulous passengers from boarding the aircraft. Under the existing system -- which is now forty years old -- "guidance" comes in the form of a \$3000 fine levied against carriers for each passenger found to be inadequately documented. Carriers are expected to learn from these errors and prevent future occurrences. This is a straightforward way of reinforcing the need to check for passport validity and the existence of a visa, but it is completely ineffective at combatting the explosive growth in fraud that the airline industry has been victimized by in the past three years.

The scope of the problem is simply too broad for carriers to solve without the active partnership of INS. Smugglers change routes and methods too quickly, and governments complicate matters by introducing new documents and requirements without informing carriers. A good example is the new U.S. passport which was put into production this month. Not only was it completely redesigned -- with a new cover, new security features, different format -- without formal notification to the industry; it is also disturbingly vulnerable to fraud and absent security features that can be readily detected by check-in personnel. Government-provided instructions, training, even the carrier consultants and preinspection programs that

finer and detention costs.

As much as this trend has grown in the past few years, the potential for further deterioration of border controls is incalculably large if the experience of other countries is a fair yardstick. We urge this subcommittee to add language to the Immigration and Nationality Act (see attachment) that would permit the adoption of such a preventative program before the situation worsens.

### SUMMARY

ATA member carriers join the travel industry coalition's effort to make sense of our national policy on international tourism, and support H.R. 1153 as the best means of removing the impediments to healthy growth of this most important source of foreign exchange. To reinforce the statements we made to the subcommittee last year, the stakes are too high for the U.S. economy for us to be complacent about the cumbersome, decades-old admissions process with which we are saddled. This is not a budget issue. The intelligent use of existing resources will be more effective than an infinite supply of immigration officers, who cannot impede the flow of illegals by continuing to employ what we have referred to in previous testimony as a Maginot Line strategy -- something that can be circumvented with a minimum of inconvenience. Such an approach to facilitation is an enduring impediment to a prospective visitor, however; it does not take personal experience

but merely word of mouth to convince a legitimate tourist that he or she would be better off going elsewhere.

For this reason we strongly urge the subcommittee to take an aggressive role in ensuring that the U.S.'s immigration policies match its economic goals; other countries have successfully balanced these interests, and we can as well. With your help in passing H.R. 1153 with the modifications we have recommended, the U.S. economy will continue to benefit from growth in travel and tourism.

At the end of the bill, add the following new section:

**Sec. \_\_. Civil Penalties.**

(a) IN GENERAL.--Section 273 of the Immigration and Nationality Act (8 U.S.C. 1323) is amended--

(1) by striking "the sum of \$3000" and inserting "a civil penalty of \$3000" both places it appears;

(2) in the second sentence of subsection (d) by striking "a sum sufficient to cover such fine" and inserting "an amount sufficient to cover such civil penalty";

(3) in the second sentence of subsection (b) by striking "a sum equal" and inserting "an amount equal";

(4) by striking "sum", "sums", and "fine" each place any such word appears and inserting "civil penalty"; and

(5) by adding at the end the following new subsection:

"(e) A civil penalty under this section may be mitigated and the imposition of the penalty waived under such regulations as the Attorney General shall prescribe in cases in which--

"(1) the carrier demonstrates that it had screened passengers for travel documents on the flight or other conveyance in accordance with procedures prescribed by the Attorney General, or

"(2) there exist other circumstances that would justify the remission or mitigation of the penalty."

(b) EFFECTIVE DATE.--The amendments made by this subsection shall apply with respect to aliens brought to the U.S. 60 days after the date of enactment of this Act.

Mr. MAZZOLI. Mr. Bonaventura.

**STATEMENT OF VINCENT BONAVENTURA, GENERAL MANAGER,  
NEWARK INTERNATIONAL AIRPORT, AIRPORT OPERATORS  
COUNCIL INTERNATIONAL**

Mr. BONAVENTURA. Thank you, Mr. Chairman.

I am here to speak for a coalition of travel and tourism organizations, including the American Association of Airport Executives, Airport Council International, the Air Transport Association, and the Travel and Tourism Government Affairs Council.

This coalition had the privilege of testifying before this committee last year, and we appreciate the opportunity to do it again this year. The coalition represents the interests of one of our Nation's largest industries: travel and tourism.

Travel and tourism generates a \$53 billion annual trade surplus. The 42.7 million international tourists who visit the United States each year spend over \$92,000 per minute on gifts, souvenirs, food, travel-related services, and lodging. In addition, the travel and tourism industry directly employs nearly 6 million Americans, accounting for \$91 billion in payroll.

Last year, this coalition was formed to advocate the adoption of legislation introduced by Mr. Schumer, H.R. 5555, which would have amended the Immigration and Nationality Act to make immigration procedures more efficient and border control more effective. We are grateful for the subcommittee's efforts in passing H.R. 5555 during the last session of Congress.

The coalition appreciates the opportunity to return again this year to support Mr. Schumer's proposals to modernize the inspection process and to addressing the growing problem of illegal travelers and the abuse of the immigration system. The coalition members believe that a legislative effort is the only method to resolve these problems, and is pleased to have the opportunity to participate in these proceedings.

The coalition is convinced that there are ways that the U.S. Government can expedite citizens' and visitors' processing, while enhancing its enforcement mission. Our suggestions, which are aimed at helping the Federal inspection services to perform these task more efficiently, providing the tools to protect our borders and facilitate air passenger entry into the country, are based on two premises. Current statutes must be reviewed and changed to take better advantage of modern technology and contemporary law enforcement techniques.

National security policy, as it relates to border enforcement, should be clearly defined and key questions answered. While there have been some improvements in passenger processing in the past few years, and we are encouraged by the soon to be introduced INS Pass Program at Newark and Kennedy Airports—and I am already enrolled in the program—we are quite concerned by INS's failure to announce its summer staffing plans, which are essential to maintaining the improved processing time.

We are also concerned with the growing number of people, who are attempting to enter the United States illegally by way of the international commercial air service.



These undocumented illegals place a strain on the resources of the inspection services and airport facilities. Aside from the extra cost imposed on INS to deal with this situation, we are concerned about the significant delays in the processing of legitimate air travelers, which is being caused by the loss of INS inspectors' time due to the extent of secondary interviews which must be conducted with the undocumented travelers at the airport.

Furthermore, many of these undocumented travelers are released into the community where they become a drain on the community resources. In addition, as apparently is the case in the World Trade Center bombing, they can pose a significant national security risk.

Legislative reform measures are needed to ensure that a public backlash to the insidious flow of illegal travelers does not result in measures which would impede the flow of the vast majority of the legitimate travelers, who are of no interest to the Federal agencies.

We believe that the legislation introduced in this subcommittee and under review today can rectify the remaining problems, which have the potential to create a serious downturn in a vital section of our Nation's economy.

Reforms that can accomplish these goals are a redefinition of inspection, to clearly allow the use of electronic passenger manifest and other forms of scrutiny as the basis for the admission of passengers. Expanded use of machine readable data from passports as the basis for government recordkeeping functions to preinspections can free inspectors from time-consuming clerical tasks.

Expansion of the INS preinspection program to additional overseas sites can reduce the burden placed on domestic arrival holds. Making the visa waiver program permanent will encourage a high-level tourism from major source countries.

Earmarking INS user fee legislation will ensure that revenues are spent on passenger inspection and facilitation initiatives, and mandate that U.S. citizens are given expedited treatment by INS. Directing INS to make a more proactive role will prevent illegal travelers from reaching the United States.

Fostering a cooperative effort with the air carriers and other Federal agencies with information on international travelers, would facilitate the prevention of known hostiles or falsely documented travelers from boarding U.S. bound carriers. Providing better training of personnel and official notification of document design changes, as well as positive rewards for carrier's compliance, are also needed to ensure these issues are addressed.

In summary, we must move quickly to assure that another important sector of the American economy is not eroded by competition from other nations. Failure to adjust to the norms in place elsewhere for welcoming tourists and business travelers, cannot be compensated for in other ways. Entry formalities must be efficient or the market will simply go elsewhere.

The airport, airline, and tourism industries believe this deterioration can be avoided by passing long overdue, revenue-neutral legislation, by undertaking a careful reassessment of U.S. border security policy, and addressing concerns over illegal immigration, and by amending procedures to deter attempts to enter the country illegally.

I thank you, Mr. Chairman.

Mr. MAZZOLI. Thank you, Mr. Bonaventura.  
[The prepared statement of Mr. Bonaventura follows:]

PREPARED STATEMENT OF VINCENT BONAVENTURA, GENERAL MANAGER,  
NEWARK INTERNATIONAL AIRPORT, AIRPORT OPERATORS COUNCIL  
INTERNATIONAL

The American Association of Airport Executives (AAAE) is a professional organization representing the men and women who manage airports in the United States.

The Airports Council International-North America (ACI-NA) represents 143 local, regional, and state governing bodies that own and operate approximately 300 commercial service airports and more than 160 associate members representing a wide variety of businesses who provide products and services to airports.

The Air Transport Association (ATA) represents the 18 carriers that handle over 95 percent of the scheduled commercial airline traffic in the United States, and that provide air service to over 80 foreign countries.

The Travel and Tourism Government Affairs Council is the national organization that represents the position of the unified travel and tourism industry on legislative and regulatory issues of common concern. As a government affairs network, the Council provides policy research and educational support to both the federal government and the industry. The Council is comprised of thirty-six major national travel and tourism organizations, representing every segment of the industry, including all modes of transportation, accommodations, food services, travel agents, recreation facilities, tour operators, attractions and state and local tourism officials.

## INTRODUCTION

International travel and tourism has become a vital part of America's effort to improve its position in the global economy. U.S. business interests depend on the mobility provided by frequent air service between countries, and visitors to this country make a significant contribution to the balance of payments. At a time when recession is taking its toll on virtually all sectors of the American economy, the \$53 billion travel and tourism generates an impressive trade surplus. The 42.7 million international tourists who visit the United States each year, spend \$92,846 per minute on gifts, souvenirs, food, travel related services and lodging. In addition, the travel and tourism industry directly employs nearly 6 million Americans accounting for \$91 billion in payroll.

Despite the importance of travel and tourism to the U.S. economy, the government has been reluctant to adopt policies that would help secure a greater share of the international travel and tourism market. Most countries have taken aggressive steps to welcome tourists with painless entry procedures; however, archaic laws and outdated priorities often turn a trip to America into an unnecessarily slow, unpleasant and often humiliating experience.

Such a reputation has serious consequences for the tourism industry. International visitors are sensitive to the way they are treated, and the impression they get is a lasting one that will influence their vacation plans for many years to come. We are also concerned that INS has not yet provided summer staffing needed to address this summer's international visitors arriving in at the rate of 81 per minute. France and the United Kingdom, among other nations, have documented the downturn in tourism that occurs when travelers are subjected to extraordinary procedures; the U.S., with its long waits to go through routine formalities, is next in line to suffer a slump in tourism-dependent jobs and a decline in the competitiveness of its related industries.

The industry is convinced that there are ways that the U.S. government can expedite citizen and visitor processing while enhancing its enforcement mission. Our suggestions, which are aimed at helping the federal inspection services to perform their tasks more efficiently, providing the tools to protect our borders and facilitating air passenger entry into the country, are based on two premises:

- Current statutes must be reviewed and changed to take better advantage of modern technology and contemporary law enforcement techniques.
- National security policy as it relates to border enforcement should be clearly defined, and key questions answered.

## THE OUTDATED IMMIGRATION INSPECTION SYSTEM

While there has been an improvement in the past few years all too frequently foreign visitors and U.S. citizens continue to face an arduous inspection procedure that can take several hours. Lengthy waits aboard the aircraft are often followed by hour-long lines in crowded arrival halls, as passengers endure a time consuming, labor intensive immigration inspection. This situation is caused by two factors: first, immigration processing that requires all passengers to be handled the same, even though less than a fraction of one percent are of interest to federal agencies; and second, an outmoded assumption that this type of scrutiny is required in the interests of national security.

The INS retains methods that are not based on some form of risk assessment or profiling technique. As mentioned earlier, INS strategy is based on the perception that current law requires a personal inspection of all passengers despite the fact that only a tiny fraction poses any enforcement risk. This leads to an unprecedented waste of resources: unable to adopt better methods, the agency instead must rely on staffing increases alone to accomplish its mission. Airport facilities, peak arrival periods, seasonal traffic and around-the-clock operations all conspire to make work force levels the least efficient of tools -- but the only one available under present guidelines and statutes.

The tourism industry believes these laws can be updated to accommodate more modern inspection systems. We are encouraged by INS's adoption of such systems as the INSPASS, but tools such as these and other uses of electronic data bases and law enforcement profiling methods cannot be taken full advantage of unless certain changes are made to the 35-year old Immigration and Nationality Act.

Legislation would have the added benefit of bringing the U.S. into closer compliance with the changes it sponsored to the 1944 Convention on International Civil Aviation (the "Chicago Convention"), which is the principal instrument of international aviation law. In 1988 the United States government offered an amendment to Annex 9 of the treaty calling for contracting states to establish as a goal the clearance of air passengers through the entire federal inspection process within forty five minutes of arrival. Under this amendment, all passengers requiring not more than the normal inspection at international airports should move through all inspection agencies in less than 45 minutes regardless of aircraft size and scheduled arrival time. The U.S. amendment was adopted on December 4, 1989.

We appreciate the efforts of the Subcommittee in passing last years INS reform legislation and we support the legislation that Mr. Schumer has introduced this year to address these issues. We believe the goal of INS reform can be accomplished in several innovative ways addressed by the legislation introduced in this Subcommittee:

- Redefine the definition of "inspection" to clearly allow the use of electronic passenger manifests and other forms of scrutiny as the basis for the admission of passengers;
- Encourage expanded use of machine readable data from passports as the basis for government record keeping functions, to free inspectors from time-consuming clerical tasks;
- Expand the INS preinspection program to additional overseas sites, thus reducing the burden placed on domestic arrival halls;
- Make the visa waiver program a permanent one in order to encourage a higher level of tourism from major source countries;
- Earmark INS user fee legislation to ensure revenues are spent on passenger inspection and facilitation initiatives;
- Mandate that U.S. citizens be given expedited treatment by INS; and
- Require all inspections to be completed within the 30 minute time frame.

It should be stressed that this legislation would have no negative impact on the budget. The \$5 user fee INS collects from all passengers arriving in the United States makes available over \$200 million per year that the agency can use to fund inspections activities. In fact, at the end of FY 92 INS showed a \$47 million surplus.

#### THE NATIONAL SECURITY QUESTION

One of the arguments used to justify current immigration inspection procedures is based on the perception that stringent documentary checks are in the interest of national security. The tourism industry believes that the assumptions on which this policy is based are due for review by appropriate government officials. Among the questions that should be answered include:

- Do the painstaking procedures used at airports properly correspond to the present national security threat posed by commercial air passengers, and are such procedures effective?



- Are the methods used at the airports consistent with those employed at the land border, where ten times as many people gain admission to the U.S. each year?
- Are the checks and routines directly related to national security, or are they required for other law enforcement purposes that are clearly justifiable?
- Do the procedures unnecessarily duplicate the rigorous airline security practices?
- Do inspectional procedures produce results that outweigh the degree of inconvenience suffered by legitimate travelers?

In the process of reexamining U.S. policy in this area, the industry recommends a thorough review of border control practices used by other nations, and by other agencies such as the Customs Service. The United States is unique in its multi-tiered inspection system, despite the fact that it is one of the few countries to benefit from fully computerized lookouts and readily available advance information on arriving passengers.

The major tourism destinations of Western Europe serve as prime examples of systems that are adept at intercepting undesirable individuals through profiling techniques. Governments in France, Germany, the Netherlands and the United Kingdom -- sensitive to complaints from constituents and tourists alike -- long ago determined that the low-risk traffic encountered on commercial flights required less intrusive methods than are used here.

#### ILLEGAL TRAVELERS

A growing number of people are attempting to enter the United States illegally by way of the international commercial air service. Their intent is to circumvent the standard procedures of the immigration system by arriving in the United States with falsified documents, or destroying their documentation en route in order to declare asylum on arrival. Hundreds of illegal travelers gain access this way everyday. These undocumented "illegals" place a strain on the resources of the inspection services and airport facilities. INS Inspectors are required to perform extensive secondary interviews, pay for costly and time consuming adjudications for each undocumented traveler, and provide for construction and maintenance of detention facilities until their trial date. INS must also arrange and pay for their transportation to detention centers if such facilities are not available at the port of entry. INS inspectors are also being reassigned from busy airports to sea and land ports to assist in the processing of the increasing number of illegal travelers creating significant delays at airports for legitimate air travelers. Many of these undocumented travelers are released into the community where they become a drain on community resources. In addition, as apparently is the case in the World Trade Center bombing, they can pose a significant

national security risk. We believe that legislative reform measures are needed to ensure that a public backlash to this insidious flow of illegal travellers does not result in measures which would impede the flow of the vast majority of legitimate travelers who are of no interest to the federal agencies. Such legislation:

- Should direct INS to take a more pro-active role in preventing illegal travelers from reaching the United States.
- Foster a cooperative effort with the air carriers and other federal agencies with information on international travelers would facilitate the prevention of known hostiles or falsely documented travellers from boarding U.S. bound carriers.
- Provide better training of personnel, and official notification of document design changes, as well as positive rewards for carrier compliance are also needed to ensure that these issues will be addressed.

In summary, we must move quickly to ensure that another important sector of the American economy is not eroded by competition from other nations. Failure to adjust to the norms in place elsewhere for welcoming tourists and business travelers cannot be compensated for in other ways; entry formalities must be efficient, or the market will simply go elsewhere. The airline, airport and tourism industries believe this deterioration can be avoided by passing long overdue, revenue-neutral legislation and by undertaking a careful reassessment of U.S. border security policy.

Mr. MAZZOLI. Let me yield myself 5 minutes.

First of all, you are very well named for someone who is involved in a tourism. Bonaventura, I think, in my halting Italian, means, good adventure or good traveling.

Mr. BONAVENTURA. Yes, Good adventure, good traveling. Yes, that is right.

Mr. MAZZOLI. Your mother and father named you very well.

[Laughter.]

Mr. MAZZOLI. Mr. Norton, let me mention a couple of things, first. You were mentioning that the airlines were not counseled or consulted. Apparently, your advice was not sought by the State Department when this new passport was developed. Is that correct?

Mr. NORTON. That's right.

Mr. MAZZOLI. I guess my question would be if so—and I do not mean on each and every change you would recommend—but even if you were contacted, is it not the fate of any kind of document—and later this year, we are going to be talking about illegal immigration and the question of work permits and things of that nature—but isn't the fate of anything like that hologram or not, to be very, very craftily duplicated by some person, somewhere in this world?

Mr. NORTON. That is true. There is going to be somebody trying to replicate a document, no matter what. However, we find that they tend to move to other documents that are easier to reproduce.

I would not say that they failed to listen to us. We actively went to the State Department, as long as 2 years ago, and said that we needed something that would allow our people to see if the document had been altered. A lot of other countries have done this. Germany has a better passport, and so has Canada, Australia, and even Korea.

Mr. MAZZOLI. It is better than our passport, now?

Mr. NORTON. It is better than our passport. It is better protection against fraud reproduction. We pointed this out to them repeatedly over the past year, and are very concerned that they have come up with a product that fails on all fronts.

Mr. MAZZOLI. It is amazing. What, for example, would the German's passport have that ours does not have that makes it less easily duplicated or less easily reproduced?

Mr. NORTON. The photograph is etched into the paper, if you will, by a laser printer. The lamination has a resistance to peeling back, which is the primary failure of this lamination. You can do it with a household iron set on a warm temperature without affecting it.

Other laminates are far better at not having that happen; like, impregnating it with other things that can be detected by certain types of instruments. That is a way that Canada has gone. We lack that as a feature. There are many steps that could be taken.

Now in their defense, I think we are locked into an appropriation system for the passport that prevents them from spending very much money on the document. We probably spend less than one-sixth of what Japan spends in producing their passports on our own. So with some changes to that, perhaps the user fee system would be a better way to counteract that problem.

Mr. MAZZOLI. There is another term we use in Kentucky. It is another saying of, "A penny-wise and pound-foolish." So, maybe, in some respect, we are being pound-foolish here by worrying about the cost of this when, in fact, we wind up with a document that does not work.

Let me ask you a last question. I do not have any doubt in the way that you will answer this.

However, there are some who charge that, really, the airlines are trying to get more or less of a free ride here. You are trying to bail out from the responsibilities you and your people have to be part of this. How do you answer that?

Mr. NORTON. I think that we have shown that we have devoted incredible resources to this effort. The installation and software design and the personnel required just to run this system alone is costing us millions of dollars.

However, our main point is that Congress said, back in 1952, check for a visa and check for a passport. If a passenger does not have one, they cannot get on. Congress has never grappled with the idea of fraud. The fine system was not developed for that purpose.

Now, because the fine is a hefty amount and because these wheels grind slowly on a policy front, we put a lot of people in place as trainers, as gate check agents, and others, to try to stop this.

However, we are doing so in a vacuum. We are not receiving government guidance, government assistance, or government programs that could help us get a better handle on this. We are operating in the blind.

Mr. MAZZOLI. Mr. Bonaventura, you can join the parade in your concern about the INS summer staffing levels and plans. You may have been in the room earlier when we were urging that some permanent Commissioner be named and cleared for the post. I guess, until that time comes, nobody knows exactly what will happen.

I have a second round of questions. However, before I yield to my friend from Illinois, I do want to salute Professor Vaughns on what I think is a very interesting way that you crystallized this subject as far as in my mind as I read your testimony the other night.

That is, we have always been a country of second asylum, as you put it. In effect, we were taking people who had been cleared abroad in a refugee program or somehow they had been someplace and they are coming in. Now all of a sudden, we are finding all these people literally at our doorstep, inside our boundaries—in our airports, in our bus stations, coming up on the shores.

As I think you pointed out, we are not really prepared for this new reality of what we are as a nation, which is a result of telecommunications, transportation, and all the abilities that people have of moving around the world in ways not dreamed of even a few years ago.

So I will come back to that point. However, I thought that you really did, in your studies, pull together exactly where we are.

We are now trying to grapple with this new reality that faces us of being in a place where people come first. That is not when they come second or not when we have the luxury of going through all the detailed work abroad and teaching them English and doing as



we did from Southeast Asia and every place else. They are now here, and we have to somehow recognize that.

Ms. VAUGHNS. I just wanted to say that this is an observation I borrowed from other legal commentators. I did not come up with that one on my own.

Mr. MAZZOLI. Well, you are entirely too honest, but we appreciate that commendable honesty on your part. We do not always attribute around here as we probably do in academia, but thank you.

The Chair recognizes the gentleman from Illinois.

Mr. SANGMEISTER. Mr. Rubin, you sound an awful lot like the people I had in my district office in Joliet, IL, before I left there yesterday, except that you are a little bit more articulate.

As I listen to your testimony—and I am trying to figure out exactly where you are coming from—are you saying that there is not a problem here at all, and that the legislation that is pending before us should be just discarded, and that there is not a problem out there? Are we just misunderstanding that whole scheme of thing, and things are not as bad as what are being alleged here, and we should do nothing? Is that what you are saying?

Mr. RUBIN. No, absolutely not, sir.

Mr. SANGMEISTER. Then we would like to hear in the committee, not only the criticism of what we are trying to do, but then what is the alternative? What are you suggesting that this committee ought to do?

Mr. RUBIN. Well, I thought I did that at the end of my oral testimony today. I certainly did, more extensively in my written testimony, set forth some of the concerns.

I think that a fundamental difference in my approach right now is we have a system that is in an embryonic stage. I think that we struggled for 10 to 12 years with ridding the system of the political taint that allowed the asylum process to be used by the administration as, essentially, a tool of foreign policy. It was a very important step. The INS worked with the advocacy community in remedying those concerns. It is just up and running now.

I think that the quality of the adjudications is vastly superior to anything that we have seen in the last 12 or 13 years. I would like to see that system beefed up.

I look at the number of adjudicators that are in other countries. We have got 150 to 160 asylum officers in this country right now. Well, last year Canada used 260 adjudicators for only 30,000 cases. Switzerland used 500.

That is three times of what we currently have to also handle approximately 37,000 cases. As I indicated, I believe this to be the approximate ballpark figure for the kinds of numbers that we are really talking about. I believe that this hundred thousand number is inflated due to, in fact, what was prior administration abuse of the asylum system.

So I think that it is manageable with sufficient resources, which is to say that currently the resources are not there. The delays are present, and it allows those people—and I would say that they are a minority, certainly, no way near a majority. However, they are certainly out there who seek to abuse the asylum system. The delays work in their favor, and we can deal with those delays.



I think that if we are willing to commit ourselves up front to quality adjudications, that those of us who advocate the rights of refugees are not that troubled by expedited proceedings.

Mr. McCollum at least talks about this in concept. I have great reservations about how it is set out on paper. However, in concept, if it is a quality adjudication and we know that it is a frivolous asylum claim, I have no problem with sending the person back. I do not want to spend money on them. I do not want to expend resources on them. If we are sure it is an abusive claim, I want to make sure that my clients, who come into my office, that I know are bona fide asylum-seekers, get a fair shot at it. Those abusers of the system are hurting my clients.

So I think that there is a problem with the system. I think that it is a question of commitment of resources. I think that we can play around a little bit with some of the up-front screens, frivolous screens, manifestly unfounded screens, but they have got to be quality adjudications.

I do not think any of us are going to be comfortable if the screening is done by someone who is not trained in asylum law, and that the person really does not understand what they need to do to make out a claim.

Again, I would refer you to the three case studies that I append to my testimony. These are cases that came through my offices. They are people who are suffering from post-traumatic-stress syndrome. It is a very common occurrence, as the chairman certainly knows in his years of work around these issues, for refugees to experience.

They come in. They deny everything. They will not reveal information. They are coming in with fraudulent documents. We have got to recognize that those people, who we would otherwise accuse of fraud—we would say, “You are hedging the facts. Why don’t you be more forthright?” They are, in fact, the people who have been terrorized, who have the greatest fear, the strongest asylum claims.

I want to make sure that whatever reform we do, recognizes that and ensures that those folks are protected.

Mr. SANGMEISTER. Mr. McNary, you say that might cost \$1 billion to follow that program; is that right?

Mr. McNARY. No. That is if you do it through detention. That is a budget-buster, in my judgment. I do not disagree with Mr. Rubin, except we do not ever get to the point that he is addressing, as long as we are overwhelmed with people coming in from London.

I mean, you need some numbers from INS as to the percentages of people who come in from a place where they could have claimed asylum. Yet, they preferred to live in the United States or they would prefer to come here, because they can beat our system. It is one thing to be humanitarian. It is another thing to be a chump.

Our system is broken. They know they can beat us. So if we can screen out those people, and we do it—and we are in a position to do it now with trained adjudicators—we would screen them out. Then we would get to a position where they can have an adversary proceeding, and the lawyers come in.

It is a close call a lot of times, on a well-founded fear of persecution. That is manageable. There we can be generous. However, we cannot do anything as long as the system is broken. We are taking

too much of our resources to take care of these people who just come in and beat us.

Mr. MAZZOLI. The gentleman's time has expired.

Mr. SANGMEISTER. If the chairman would please allow me for just one moment. I have someplace, apparently like everybody else on the committee, to go to today. I just want to get to Mr. Norton, because I still do not understand the responsibility of the airlines.

Let's say that it is a good forgery, but it is a forgery of a passport. Are the airlines completely responsible, regardless of how well that is done or that 9 out of 10 people would be fooled by that. Do you get fined anyway?

Mr. NORTON. If they show up with a good forgery, one that is well done, no, they do not fine us. We are fined for those who should have had a valid passport or should have had a visa and showed up with an expired passport or no visa.

We are also fined for those people who destroy or pass off their documents en route. That, the Government feels, is showing up without a passport or visa, and we are fined for it.

The problem is it is much more complicated than just us checking to see whether or not they have a valid document for purposes of admission to the United States. We never had this problem when the law was passed in 1952.

So, yes, we are held liable for those who show up with no documents, who destroy them en route, after having showed us something that was good enough to pass our scrutiny. It might not escape the detection of an INS officer, but it gets by us, and then they pass them on through the system. They recycle them. Many people take advantage of the same scam.

Mr. SANGMEISTER. I think our passports are good for what, 10 years now?

Mr. NORTON. Yes, 10 years.

Mr. SANGMEISTER. You are telling me that other countries have a much more sophisticated manner of effectively putting that document together so that it cannot be forged, and we are way behind in that type of procedure?

Mr. NORTON. Absolutely, and that is well documented. I do not think we are behind, technically, in being able to do it; but I think that our funding limitations have caused us to issue an inadequate document.

Mr. SANGMEISTER. Is the design of that up to the State Department?

Mr. NORTON. Yes.

Mr. MAZZOLI. Yes, the gentleman, formerly from INS?

Mr. McNARY. Mr. Sangmeister, I wanted to encourage you to pursue something. I am a short-termmer, if any termmer.

You asked the question about monitoring devices, and, obviously, you have had some experience. When I first came into INS, I explored that in great depth, because INS detention is unique. We are talking about a minor offender. We are talking about short times that people are suppose to be detained. It seemed logical to me to use monitoring devices.

What I found was that the monitoring device won't work, because the person will just take it with them. A monitoring device works with criminals, because a network under the NCIC system is such

that if they are picked up sometimes, then they will be returned. They become fugitives. These people are not fugitives. They are never in the NCIC system.

While I was there, we did get about 10,000 names, mostly criminal aliens. In fact, they all have some criminal connection into the NCIC. Then when those people are stopped, they are going to be returned and deported. What I would encourage you to do is to pursue the monitoring device, but get anyone who does not show up into the NCIC. Then you can use the bracelet or the anklet. They can be released. You do not have the detention cost. There is some incentive not to run, first of all, because any local sheriff, then, will be advised that they are loose and they can be returned. As long as those that are not fugitives, then it won't work; because they just run off and blend into the subculture.

Mr. SANGMEISTER. If it was any other system, you are saying that you think it could work?

Mr. McNARY. It could. If the law enforcement network is plugged in, once that person runs and becomes a fugitive and their names goes into the computer, so that they are like anybody who escapes from process, then that will work.

Mr. MAZZOLI. Thank you very much. That is very interesting that you talk about that.

I am also fascinated by what I hear today. That is in line with the gentleman from Florida's bill that tries to do quick things but fair things to people who should not be here and have no reason to be here, and certainly not under any claim of asylum.

It seems to me that if the data—and I am going to try to follow up on it somehow—show that those people who show up with no documents are generally part of a scam. They have been coached and trained to get rid of their documents or they pass them off to a courier who goes back and they recycle those. There are people coming from third countries in which they have no problem, there is no question that they are not persecuted, and they can seek asylum there.

Asylum means just that. Asylum does not mean immigration. Asylum does not mean having a job in America. Asylum does not mean coming to join a friend in Chicago or someone in Orlando. Asylum means get me out of this persecution. Protect me from those persecutors. Give me a break.

If they can get that break in England or in somewhere in South America or in Scandinavia or from whence they come, maybe those are elements. They fit the profile. Then anyone who shows up without documents or anyone who comes from another country in which they have not been persecuted, automatically there is like a *prima facie* case. Then they ought to go back.

Unless they can somehow overcome that case by the showing, as Mr. Nadler says, of people who cannot have good documents, who are in special extremist conditions, then it seems to me that maybe that is what we ought to be looking at. Maybe some of those elements that fit this kind of a profile is someone who is here to try to beat the game.

Anyway, thank you very much, George. The Chair recognizes the gentleman from Florida.



Mr. McCOLLUM. Well, I thank the gentleman, and I think that he has made a good point about one of the aspects of this whole thing. There is no doubt about it.

I know that is true, just looking at the airports alone. Some people say that my bill came only because of the incidents up at JFK and the "60 Minutes" program, and it is not so. It is just coincidental that we introduced it a couple of days afterwards. We had that bill ready before "60 Minutes" ever came along, and it just was one of those happenstances.

Looking at what is happening at the airports and at the statistics, even, Mr. Rubin, if you were right about what happened with Nicaraguans and so on, it is clear we are facing an increasingly serious fraud problem. The data we have now show that we have had a 300-percent increase at those airports of this kind of fraudulent document or no document over the past 2 years. We are up to about 35,000 a year with them, and they are not the Nicaraguans or whoever.

The rate of increase—we have got to address it. We just must address it in some way.

I would like to ask you this, Mr. Norton. If I am not mistaken, at some time in the past, your organization has supported the idea of an exclusion screening mechanism at airports or some kind of an credible asylum claim. I know today you came in primarily to talk about Chuck Schumer's bill, which I support, too, on the inspections.

However, does ATA still support the idea? I am not asking for an endorsement of my bill, but is there the concept of some kind of a screening by asylum officers at the airports?

Mr. NORTON. You know, summary exclusion has been in existence since we had the visa waiver pilot program put into effect, and it has worked. We do not have any problem with that. People are turned around without much problem at the airports. Granted they are not from countries that one would normally be seeking asylum from.

Mr. McCOLLUM. Sure.

Mr. NORTON. However, a summary exclusion system has not hurt us in any way. I think that we are not sure if there is a nexus between the problem we are having and summary exclusion, but then perhaps our idea of dealing with the "no documents" cases was a fine tuning on that idea.

Mr. McCOLLUM. Well, it probably is related, but I understand your primary concern, and that is only natural. I am not trying to divide that issue with you.

I just wanted to see if your previous position on summary exclusion, in general, was consistent with what I am doing. It sounds like it still is.

Let me ask you one other question. Some foreign carriers apparently actually have some folks who are involved in this whole area of fraudulent documents. In other words, we have seen cases involving some of their people, who apparently were participating in the fraud.

Has the association been aware of this? Are you concerned about it? Are you looking at trying to find a mechanism or to get our Government to address that problem?

Mr. NORTON. Well, we took the position 2 years ago that the Government should, by some means, whether it is legislation or by policy, establish a very strict standard for us in how we are to screen the people that would ordinarily result in fines for us.

We have no problem living up to that high standard if the Government should choose to play ball. If other carriers, meaning the non-American carriers, cannot live up to that standard, then they should be dealt with accordingly.

Mr. MCCOLLUM. Have you heard what I have and understood what I do, that some of their people abroad have actually been involved in the fraudulent creation of these documents and so on; that there are people working for them who have been involved in the illegal activities?

Mr. NORTON. Yes, and I draw the analogy that, of course, they are not members of ours. We represent the U.S. side of the equation.

Mr. MCCOLLUM. I understand that. You had better make that disclaimer.

Mr. NORTON. I make the analogy, however, of the same problem that Customs faced a few years ago with smuggling by a commercial aircraft with corrupt airline employees. That problem has largely been obviated by the sort of cooperative program that we have recommended. So, yes, we do recognize that can be a problem, but it is one that can easily go away with the proper compliance program.

Mr. MCCOLLUM. To Gene McNary, I would just like to say, number one, it is good to see you back.

Mr. McNARY. Thank you.

Mr. MCCOLLUM. I appreciate the fact very much that you are willing to continue to be interested enough to come, regardless of not wearing the official hat.

Number two, I thought your testimony and all that you put together today was as articulate and on the point as any you gave when you were in charge. So, we really are especially appreciative of that fact.

I do not have a question to ask you. You have endorsed the concepts that I support and, in fact, all three measures. You have articulated very well the answers to a lot of things.

Mr. MAZZOLI. I have a question.

Mr. MCCOLLUM. Go ahead. Ask it.

Mr. MAZZOLI. The question is, you are looking a lot younger. You do not have those worry lines you use to have.

Mr. McNARY. Well, I know. I have shifted that to you.

Mr. MAZZOLI. I know. You have been smiling a lot more today. There is nothing intense about you.

Mr. McNARY. Well, you know I love the job and the people there. I've said this in my prepared testimony, but I did not say it orally today.

Let me make one point, because Rick will identify me, even though he has not, as the culprit.

What he is saying is that with carrier compliance, that they would like to have the Government set forth a set of standards that if they follow it, then they do not have to pay the \$3,000 fine. I



think that is a good position for him to take on behalf of the airlines.

My position was always that it is to their advantage to make these changes on their own. They are as technically astute as the Government. Make the changes. Do not bring us illegal entries. The fine should be some incentive to make those changes. That is just so you understand what carrier compliance is. It gets him off the hook.

Mr. MAZZOLI. Well, that was what I sort of mentioned earlier about someone making that claim.

I was just curious though, I mean, many times, you all were in the same room. Is there such a thing as an ability on the part of the Government to work with the airlines to make things better, to coordinate with them, that perhaps is not now being done?

Mr. McNARY. No, I was surprised that the inspector's schedule was not released, or there was some confusion. That is because I thought that we were well staffed and that we had worked with the airlines. We have even got some accolades from the port director at JFK, which I thought would never happen.

Mr. NORTON. I will use my characteristic habit of bluntness here. I think it is a case of the Government expecting something for nothing.

If you look at the fine system as your only program against the problem we face, where we sit back and we wait for it to happen, and then we issue a \$3,000 fine and expect the carrier to learn from that result, it is simply not going to go away.

We have a 140 different jump-off points out there that we are contending with. If the Government wants that control, if it wants to use that resource, like the FAA and Customs have done, it is not inconsistent, and certainly, it is not without precedent that we get some break on fines.

We are not saying that it is all or nothing. For a problem that did not exist 3 years ago, much less 40 years ago, we are getting no help at all.

Mr. McNARY. However, it is up to them not to bring us these people. They got a little skirmish when I use to say that that is aiding and abetting to bring those illegal people into this country. They did not like that kind of language.

Mr. MAZZOLI. Well, yes, it is evident that if we have a certain number of dollars, you have got to get more bounce for the buck. There would be economies of scale and efficiencies if the sides could work together.

The evidence of this passport just stuns me, frankly, that we spend all this effort and reach this wonderful peak, and then cough up a document that is not nearly as good as the other ones in the world. Then that is going to sit with us for all these many years.

I have just a couple of quick points, and then I will let you all go. Then we have one more panel.

One is, Mr. Rubin, I would like you to take a second look at these worldwide increases. I pick up the New York Times. Every day they do some kind of a piece about the number of folks crowding into Germany or the number of people who are going into all these other countries.

I mean, to me, it is just impossible that you would say that these are two spikes in an otherwise unblemished record of asylums at about 40,000. It is impossible.

They represent a worldwide increase in numbers. I cannot tell you how much I dispute your conclusion on these numbers. I think that to say otherwise is just to ignore reality.

Mr. RUBIN. Well, if I could just respond.

Mr. MAZZOLI. Well, you can always find some reason. Every year, you are going to find an Ed Meese hanging around, or you are going to find some kind of Salvadoran hanging around. Always, you can explain it. Every year, something is going to cause this to happen. It is the way the world is now working.

Mr. RUBIN. Well, but again, those are things that we can control. Some of the factors that you referenced, Mr. Chairman, are things that we cannot control, and we do need to acknowledge that.

Mr. MAZZOLI. I support you in saying we ought to make sure that we examine every available format before we move onto something else.

Mr. RUBIN. Well, when we are forced to readjudicate 150,000 cases because the system failed and we discriminated against people, we cannot then say the system is being overwhelmed and we have got to reform.

Mr. MAZZOLI. I can think that there is going to be, in every year, as we go on for a long time, some reason or some series of reasons controllable and noncontrollable, and that we are going to see this thing increase. It gets back to what the professor said, we are now finding ourselves, in one way or the other, in a very new role.

I would like to ask you, Professor, about one other thing that you said, along with pointing out some possible shortcomings in the bill that I have introduced, which I certainly intend to look at. That would be things like the 7 days as not being sufficient time, and the exceptions, perhaps, are too limited.

One thing you talk about in the gentleman from Florida's bill, was on creating a specific exclusion on the grounds of fraudulent or no documents. You suggest that there is already in immigration law either an exclusion on that basis, and I am not that familiar with the law. Maybe you can help us.

Ms. VAUGHNS. That is, of course, based upon textbook knowledge of the experience.

Mr. MAZZOLI. It is better than I have, by far. That is what we need around here once in a while.

Ms. VAUGHNS. Recently, it appears to me that Congress dealt with this very statutory provision several years ago. Instead of just visa abuse or fraud, Congress wanted to also exclude individuals on the basis of entry fraud.

I interpreted that obviously, as not just misrepresentation. However, the category or the title of the section, as codified, does not specify fraud specifically. However, it seems to me that this constitutes fraud and I teach this in my immigration course. In addition, both casebooks that I rely on view this as admissions fraud.

So my only point is that to the extent the INS considers this provision as an insufficient ground for exclusion based upon the kind of conduct that is currently taking place at these airports, then perhaps it needs to be clarified. However, that is my impression, and

not based upon actual practice, that this kind of conduct is currently covered under the law.

Mr. MAZZOLI. It could be we are not using the existing laws as fully as we should.

Mr. McNARY. No, those cases—they won't issue. The U.S. attorney won't issue them.

Mr. MAZZOLI. Is that what it is?

Mr. McNARY. The law is sufficient except that they are just not going to take them.

Mr. MAZZOLI. We have a mix from people from academia and people from the trenches, I guess you would say. Sometimes it does not always work.

Let me thank you very much. Again, this was a very interesting panel. You were very helpful. Let me just take the words out of my friend's mouth, that if we have questions, and we might, we will send them to you in writing and we will ask you to address them that way.

Ms. VAUGHNS. We will be happy to. Thank you.

Mr. MAZZOLI. Thank you very much.

Our last panel, to say the least, is a very enduring panel, and patient beyond belief.

We call Ms. Elisa Massimino, the staff attorney for the Lawyers Committee for Human Rights; Mr. Warren Leiden, executive director of American Immigration Lawyers Association; Mr. Dan Stein, executive director of the Federation for American Immigration Reform; Dr. Michael Teitelbaum, of Alfred P. Sloan Foundation—it is nice to see you again, Mike—and Mr. Michael T. Lempres, former Executive Associate Commissioner for Operations, Immigration and Naturalization Service.

You are next Warren, and then Dan, and then Mike, and then Mr. Lempres. Since we called them that way, I am not sure who decides or whether it is by roll of the dice or not, but anyway, Ms. Massimino, we welcome your testimony.

#### STATEMENT OF ELISA MASSIMINO, STAFF ATTORNEY, LAWYERS COMMITTEE FOR HUMAN RIGHTS

Ms. MASSIMINO. Thank you, Mr. Mazzoli. Thank you for inviting us to testify today.

The Lawyers Committee has worked for 15 years to promote international human rights and the rights of refugees, including providing asylum to refugees on a nondiscriminatory and fair basis. We attempt to ensure that all nations, including the United States, understand and abide by their obligations under international law.

Recent notorious instances have generated a picture of asylum in crisis. But, notorious incidents inspire bad policy. Although we are a nation of compassion and refuge, we have made some missteps. Our refusal in the 1930's to grant refuge to a boatload of European Jews fleeing the onslaught of the Holocaust remains a black mark on our national conscious. Such low points in our treatment of refugees resulted from fear and frustration like that being expressed today. We must not slip into another dark period in our treatment of those who seek our protection.

We need not rely on abstract compassion to inform our views about the treatment of refugees. Our obligations are defined by



international law and our own Constitution. United States courts have found that a refugee may not be returned to a place of persecution without constitutional due process.

Minimum international standards for procedural protection have been set forth by the Office of the United Nations High Commissioner for Refugees. These are described in detail in our written testimony, and they highlight the need for special care in the adjudication of asylum claims.

It is against the backdrop of these obligations which any proposal for asylum must be viewed. In our written testimony, we outline specific problems with each of the bills currently under consideration and offer alterations to conform those bills to international and domestic legal requirements.

The most telling critique of these proposals is how they would affect genuine refugees fleeing persecution. The Lawyers Committee, through its asylum representation program, interviews hundreds of asylum-seekers. Many of them arrive in the United States with false or no travel documents, do not speak English, have no understanding of U.S. law, and are fearful of contact with authority figures. Many are women with small children. They are often bewildered with little but the clothes on their backs and a desperate fear of being returned to face persecution. These among the most vulnerable, and yet, in many instances, the most courageous individuals I have ever met.

Take the case of Mrs. "K" from Ghana, one of our clients. Her husband founded a human rights organization and was forced to flee when he learned that he had been targeted for arrest.

Shortly after his departure, armed government soldiers broke into the home of Mrs. "K," searching for her husband. When she refused to tell them of his whereabouts, the soldiers beat Mrs. K, who was 4 months pregnant.

The soldiers returned three times to interrogate and beat Mrs. "K." Fearing for her life, as well as the lives of her daughter and her unborn child, Mrs. "K" fled Ghana to the Ivory Coast, where she was befriended by a French family who gave her a passport and an airline ticket to Canada.

When Mrs. "K" and her daughter landed at JFK and were searching for their connecting flight they were stopped by immigration officials. Mrs. "K," 8 months pregnant at the time, was detained, along with her young daughter.

After a month in detention, she and her daughter were released. They were granted asylum a year later and will soon be permanent residents.

The case of Mr. "B," a Somali, demonstrates the vulnerability of asylum-seekers who do not speak English but must explain their fears to immigration agents at the airport. Mr. "B" was a member of the prodemocracy opposition movement and was arrested by Siad Barre's security police.

After 2 months of daily torture, Mr. "B" confessed to his opposition activity. The Government sentenced him to 10 years in prison. Five years later, he escaped.

Fearing that he would be recaptured, Mr. "B" decided to flee Somalia. While in hiding, he was able to obtain a fake passport and visa, and a ticket to the United States via London.

Although Mr. "B" spoke only Somali, he tried to inform the immigration officials at JFK that he wanted to apply for asylum in the United States. He was not told that he had a right to see an immigration judge. Immigration officials forcibly placed him on a plane bound for London, despite his efforts to make them understand that he could not return to Somalia.

Once on the plane, Mr. "B" went into the bathroom and slit his wrists and throat with a razor blade. He preferred death to persecution in Somalia.

Fortunately, he was rescued. After recovering from his injuries, he was detained for 6 months until he was granted asylum. He is now a permanent resident in the United States.

These are only two of the many hundreds of similar cases we see of refugees arriving in the United States without valid passports or visas, seeking asylum.

Mr. MAZZOLI. I hope you are not making the point, somehow, with these very heart-rending cases, that somehow this subcommittee is going to be oblivious to that. I mean, I resented what Mr. Rubin said earlier, and I take offense at this.

I do not believe that is going to be the upshot of this. I do not think those deserving people would necessarily not be admitted in under the gentleman's bill or my bill or would be denied admission under Mr. Schumer's bill. I do not think it works that way.

Ms. MASSIMINO. Well, Chairman Mazzoli, I certainly do not intend any personal criticism. However, I do think that it is possible that these people may not be admitted under the bills that are being proposed.

Mr. MAZZOLI. They might have a better chance under our bills than they have today, for all we know. You were talking about the immigration judges—I mean, now we have a trained cadre of people. That is the whole idea. They would be trained under the gentleman's bill or trained under the gentleman from New York's bill.

Ms. MASSIMINO. I think it is very important, as we point out in our written testimony that the persons who would be making this initial adjudication under any kind of summary exclusion of people without valid documentation should be specially trained asylum officers.

Mr. MAZZOLI. It would be under the gentleman's bill.

Ms. MASSIMINO. That's not the plan right now.

Mr. MAZZOLI. If I understand the gentleman's bill, the only time is if a person doesn't say asylum. In which case, they are sent back by whoever catches them or whoever apprehends them. However, if they say asylum, they are moved over to the next door, which is where you have an asylum trained person.

I mean, understand, we are not trying to do anything crazy or silly here. We are looking at reality. We are looking at a system that is overloaded to the point of going tilt.

What happens when a system goes tilt? Mr. Becerra said it, and other panels said it. What happens when that happens? Xenophobia takes over. I am saying that we are your bastion, it seems to me, of putting something out there that is going to be fair and sensible and balanced, and still does not allow us to be played like a violin.



Ms. MASSIMINO. I certainly agree. We all agree, as, I think, has been stated by some of the other people testifying today.

Mr. MAZZOLI. You did not say that in your statement.

Ms. MASSIMINO. What I wanted to point out by raising these particular cases is not to say that it is obvious that these people would not be granted asylum under the proposed system or the current system or any system.

Mr. MAZZOLI. You did not preface it that way, though.

Ms. MASSIMINO. The point is that there are specific needs and sensitivities that refugees face, such as the fact that they do not speak English. The folks who are abusing the system—and we all know that there are abusers—hurt the people who I have just mentioned, these people who are obviously refugees. They do not need to be waiting in line with people who are making manifestly unfounded claims.

Whether those people have documents or not, I think it is crucial that we focus on whether someone has a manifestly unfounded claim, not necessarily on the validity of their documents. My point with this in raising these two specific examples is that these are people who had fraudulent documents. I would like to dispel the idea that I have heard today in this hearing that people who have fraudulent documents are more likely to have fraudulent claims than those who have valid documents.

Mr. MAZZOLI. How about people with no documents?

Ms. MASSIMINO. It is the exact same thing.

Mr. MAZZOLI. Well, I think that people who study this stuff, say those with no documents are in a position, more likely, to be a part of syndicate operation than those with bad documents or fraudulent documents.

Ms. MASSIMINO. Well, chairman, I have not seen the statistics on the people who do not have documents. However, I know from our own personal experience with many hundreds of cases in the New York and D.C. area that clients many times, who have their own passports, not fraudulent passports, get rid of them on the plane, because they are fearful of being returned to a place where they fear persecution.

Mr. MAZZOLI. Thank you.

[The prepared statement of Mr. Helton follows:]

PREPARED STATEMENT OF ARTHUR C. HELTON, DIRECTOR, REFUGEE  
PROJECT, LAWYERS COMMITTEE FOR HUMAN RIGHTS

I. Introduction

Chairman Mazzoli and members of the Subcommittee, I want to thank you for inviting us to testify on the critically important issue of asylum reform. Since 1978, the Lawyers Committee for Human Rights has worked to promote international human rights and refugee protection, including the provision of asylum to refugees on a fair and non-discriminatory basis.

I am the Director of the Refugee Project of the Lawyers Committee, with offices in New York and Washington, D.C. In this capacity, I have worked for over a decade on issues concerning refugees and asylum. In the course of our efforts to promote the human rights of refugees, we have endeavored to ensure that all nations, including the United States, understand their obligations under international law and abide by them. We thus offer this testimony on the proposed Immigration Pre-inspection Act of 1993, the Exclusion and Asylum Reform Amendments of 1993, and the Asylum Reform Act of 1993.

Refugees, by virtue of their situation, are often forced to flee persecution in irregular and unauthorized ways. They may have no travel documents (passports or visas) or even identification papers. Indeed, if individuals were able to obtain a passport or permission to leave from their home countries, they might well have to explain such official solicitude in order to establish a claim for refugee protection. This population includes refugees from Afghanistan, China, El Salvador, Ethiopia, Haiti, Iran and Iraq who have fled torture, execution or inhumane detention.

Our testimony today is animated by three basic principles. First, any reforms in the U.S. asylum system should not violate international obligations or deny constitutional entitlements. Second, the United States should not deviate from international standards concerning the protection of asylum seekers. Third, reform should encourage international cooperation and burden-sharing in the formulation of world refugee policy. We address these points in order. There follows analyses in these terms of the specific legislative proposals, and a discussion of the situation of asylum in the United States.

## II. International Obligations and Constitutional Entitlements

### A. Criteria

The 1951 Convention relating to the Status of Refugees (189 U.N.T.S. 137), and its 1967 Protocol (606 U.N.T.S. 267, 19 U.S.T. 6223), to which the U.S. acceded in 1968, provides, in pertinent part:

the term "refugee" shall apply to any person who . . . owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

The United States incorporated this standard into its domestic laws in the Refugee Act of 1980.<sup>1</sup> The treaty definition has now been subscribed to by 114 governments in addition to the United States.

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<sup>1</sup>Pub. L. No. 96-212: See INS v. Cardoza-Fonseca, 480 U.S. 407 (1987).

## B. Remedy

While there is no categorical right to receive asylum at the international level,<sup>2</sup> there is a well-established individual entitlement of a refugee not to be returned to a place where he or she may experience persecution. The 1951 Convention in Article 33(1) provides:

No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

This right of non-refoulement is the foundation for all refugee protection and so fundamental as to have achieved the status of customary international law, binding even on States that have not acceded to the refugee treaties.<sup>3</sup> The United States incorporated substantial aspects of the treaty obligation into its domestic law by amending its withholding of deportation statute in the 1980 Refugee Act.<sup>4</sup> Congress specifically enacted the Refugee Act to create more humane and effective procedures for dealing with

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<sup>2</sup>The Universal Declaration of Human Rights (in Article 14(1)) declares that "[e]veryone has the right to seek and enjoy in other countries asylum from persecution." General Assembly Resolution 217A (III) of 10 December 1948. See G.S. Goodwin-Gill, The Refugee in International Law (1983) pp. 101-23, discussing asylum as a form of discretionary State power.

<sup>3</sup>See Goodwin-Gill, supra note 2, at 69-100.

<sup>4</sup>See INS v. Stevic, 467 U.S. 407 (1984). While the Court determined that Congress had intended to continue to utilize a domestic law standard (probability of persecution) in adjudicating withholding claims, it suggested that the Attorney General through an exercise of discretion in asylum adjudications could avoid any incompatibility with international standards. Id. at 428-30 n.22.

refugees, and to bring this country into compliance with its obligations under international law.<sup>5</sup>

U.S. courts have found that the right of non-return, as embodied in U.S. law, constitutes a federally created liberty interest of which an individual cannot be deprived without constitutional due process of law.<sup>6</sup>

### III. Procedural Standards and Entitlements

#### A. International

The international legal regime leaves largely to the legal traditions and cultures of the individual States the precise nature of the procedures by which to determine whether individuals are refugees who deserve protection. However, minimum international standards have been promulgated. The most advanced version of those standards was issued by the Office of the United Nations High Commissioner for Refugees (UNHCR), the body charged with supervising the application of the refugee treaties, in connection with litigation challenging the adequacy of status determination procedures for Vietnamese asylum seekers in Hong Kong. UNHCR states:

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<sup>5</sup>See S. Rep. No. 256, 96th Cong. 1st Sess. (1979); 125 Cong. Rec. 23,231 (1979); Refugee Act of 1979: Hearing on H.R. 2816 before the Subcomm. on International Law of the House Comm. on the Judiciary, 96th Cong., 1st Sess. (1979) at 27.

<sup>6</sup>See Augustin v. Sava, 735 F.2d 32 (2d Cir. 1984); Yiu Sing Chun v. Sava, 708 F.2d 869, 876-77 (2d Cir. 1983); Haitian Refugee Center v. Smith, 676 F.2d 1023, 1039 (5th Cir. 1982); Nunez v. Boldin, 537 F. Supp. 578, 584 (S.D. Tex.), appeal dismissed, 692 F.2d 755 (5th Cir. 1982). See also Orantes-Hernandez v. Smith, 541 F. Supp. 351, 378 n.33 (C.D. Cal. 1982).



The applicant should receive the necessary guidance as to the procedure to be followed (para.(e)(ii) of Conclusion No. 8).<sup>7</sup> Given the vulnerable situation of an asylum seeker in an alien environment, it is important that he/she should on arrival receive appropriate information on how to submit his/her application. Such advice is most effective on an individual basis and is provided in many countries by legal counseling services, funded by government, UNHCR or non-governmental sources.

The applicant should be given the necessary facilities, including the services of a competent interpreter for submitting his case to the authorities concerned. (Para.(e)(iii) of Conclusion No. 8).<sup>8</sup> This requirement entails, first of all, that the applicant should be given the opportunity to present his/her case as fully as possible. As refugee status is primarily an evaluation of the applicant's statement, the quality of the interview is crucial to a proper determination of the claim. Paragraphs 196-205 of the [UNHCR] Handbook<sup>9</sup> deal with this aspect of the procedure and make it clear that "while the burden of proof in principle rests on the applicant, the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner" and also that the examiner should "ensure that the applicant presents his case as fully as possible and with all available evidence." The interviewer therefore has a particular responsibility to ensure that the interview is comprehensive and the records reflect accurately what has been said. The reference to "necessary facilities" could, in UNHCR's view, also include legal advice and representation, if the applicant requires these in order to present his case properly.

If the applicant is not recognized, he should be given a reasonable time to appeal for a formal reconsideration of the decision, either to the same or different authority, whether administrative or judicial, according to the prevailing system (para.(d)(vi) of Conclusion No. 8).<sup>10</sup> Although this requirement is phrased in general terms, in UNHCR's view the notion of "appeal for a formal

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<sup>7</sup>Reference is to Conclusion Number 8 on the Determination of Refugee Status, adopted by the governmental Executive Committee of the UNHCR Programme, 28th session (1977); see also UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status (1979), at para.192 ("Handbook").

<sup>8</sup>Supra note 7.

<sup>9</sup>Id.

<sup>10</sup>Id.

reconsideration" includes some basic principles of fairness applicable equally to judicial or administrative reviews, such as the possibility for the applicant to be heard by the review body and to be able to obtain legal advice and representation in order to make his submission; for the reconsideration to be based on all relevant evidence; and for a consistent and rational application of refugee criteria in line with the guidelines established in the UNHCR Handbook. UNHCR believes that the notion of fairness also requires the review body to provide the grounds for its decision, so that the applicant can be reassured that he has had a fair hearing and the criteria have been applied properly.

The application should be examined by "qualified personnel having the necessary knowledge and experience, and an understanding of an applicant's particular difficulties and needs" (UNHCR Handbook, para.190).<sup>11</sup> An understanding of the application of refugee criteria as well as a knowledge of the situation in the country of origin are necessary, in particular, for assessing an applicant's credibility and the well-foundedness of his fear of persecution.

The applicant should be granted the benefit of the doubt if his statement is coherent and plausible and does not run counter to generally known facts (paras. 203-204, UNHCR Handbook).<sup>12</sup> Because of problems of obtaining evidence to substantiate a refugee claim, and the serious consequences which could result from an erroneous decision, the evidential requirements should be approached with flexibility.<sup>13</sup>

#### B. Domestic

Constitutional due process is a flexible concept. In the immigration context, additional uncertainty is added by virtue of the somewhat differential treatment of

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<sup>11</sup>*Id.*

<sup>12</sup>*Id.*

<sup>13</sup>UNHCR, Note on the subject of the role of UNHCR in the Hong Kong procedure for refugee status determination (1990).

unadmitted aliens.<sup>14</sup> To determine the amount of process due, the Supreme Court has established a balancing test which weighs the various interests involved in an adjudication.

The Court has held:

[I]dentification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and, finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail.<sup>15</sup>

This judicial test is used to determine when the federal courts will intervene to declare procedures unconstitutional. Congress is free, of course, to legislate more ample provisions. These principles should inform the evaluation of the proposals at issue here.

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<sup>14</sup>See Association of the Bar of the City of New York (Committee on Civil Rights), The Right to Recognition as a Person Before the Law: The Case for Abolishing the Immigration Law Entry Doctrine, 46 The Record 304 (1991).

<sup>15</sup>Mathews v. Eldridge, 424 U.S. 319, 335 (1976). See Goldberg v. Kelly, 397 U.S. 254 (1970), holding that due process requires that a public assistance recipient be afforded an evidentiary hearing before the termination of benefits. At a minimum, a welfare recipient is to have timely and adequate notice detailing the reasons for the proposed termination, an effective opportunity to defend by confronting any adverse witnesses and by presenting his or her own arguments and evidence orally. Also, a recipient must be allowed to retain counsel, and stated reasons by an impartial decision maker are essential. Id.

#### IV. The International Context

The Preamble of the 1951 Convention reiterates the determination of the High Contracting Parties to assure refugees the widest possible exercise of the fundamental rights and freedoms embodied in the Charter of the United Nations and the Universal Declaration of Human Rights. Specifically, the Preamble urges all States to "do everything within their powers to prevent this problem from becoming a cause of tension between States;" it recognizes that "the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot be achieved without international cooperation."

Currently, more people are in flight from persecution, war, human rights violations and other events seriously disturbing public order than at any time since World War II. The UNHCR reports over 17 million refugees around the world,<sup>16</sup> who have crossed a border and who have a fear of persecution upon return.<sup>17</sup>

In the United States, over 200,000 asylum seekers have requested protection under the asylum provisions of the Refugee Act of 1980. The admission of 132,000 refugees

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<sup>16</sup>According to the UNHCR, the largest concentration of refugees, about six million, is found in the area of southwest Asia, north Africa and the Middle East. This includes over five million Afghans in Pakistan and Iran, the largest single displacement of a national group. These refugees await stability and an end to renewed conflict in Afghanistan.

<sup>17</sup>Africa has the largest numbers of dispossessed, including six million refugees and over 13 million internally displaced persons. A substantial number of those displacements are in the Horn of Africa and in the countries bordering Liberia.

was authorized in 1992 under the overseas admissions program established by the Refugee Act.<sup>18</sup>

V. The Proposed Legislation

A. H.R. 1153: Immigration Pre-inspection Act of 1993

This bill provides for the establishment not later than November 1, 1995, of pre-inspection stations staffed by U.S. examiners in certain foreign airports (at least three of the airports among the 10 foreign airports that serve as the last points of departure for the greatest number of aliens who arrive from abroad without valid travel documentation).<sup>19</sup> No such pre-inspection station is to be established in a country prior to a determination that such country "maintains practices and procedures with respect to asylum seekers and refugees" in accordance with the refugee treaties. The bill also provides for the assignment of U.S. immigration officers to act as consultants to carriers at any foreign airport where no pre-inspection station is established.

Additionally, the bill provides for summary exclusion or deportation of aliens who are nationals of visa waiver countries (or who claim to be such nationals) and who are

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<sup>18</sup> U.S.C. §1157 (1988).

<sup>19</sup>In recent testimony before the Information, Justice, Transportation, and Agriculture Subcommittee of the House Committee on Government Operations, Gene McNary, former Commissioner of the Immigration and Naturalization Service, indicated that such airports might include London, Paris, Frankfurt, or Rome.



not in possession of valid visas, but requires the Attorney General to establish an asylum procedure for such individuals.

Relatively modest adjustments need to be made to this bill to render it compatible with international and constitutional standards. Five key points should be addressed.

1. In addition to the consultation required between the Attorney General and the Secretary of State, consultation regarding siting decisions should be required with the United Nations High Commissioner for Refugees. Such an arrangement would help avoid the potentially awkward nature of the inquiry on a bilateral basis regarding the treatment of refugees and help ensure that the question is answered in strictly humanitarian terms.
2. Such pre-inspection stations should not be sited in countries from which genuine refugees are currently fleeing and seeking asylum abroad from persecution. Such individuals should continue to have access to protection. Accordingly, a provision should be added to the bill to ensure that, prior to the establishment of a pre-inspection station, no refugee from that country has been admitted as a refugee into or granted asylum by the U.S. for at least three years.

3. Any immigration official posted as carrier consultant should receive training in issues of refugee protection in order to ensure that the right of access to international protection is respected.
4. The asylum procedures to be established for those to be removed from the U.S. under the special procedures concerning the visa waiver program should be substantially equivalent to the procedures promulgated under the authority of the Refugee Act of 1980. The Refugee Act recognized the unorthodox ways in which asylum seekers often flee persecution and stressed the need for uniform procedures.<sup>20</sup> Certainly, the determination to extend the benefit of the visa waiver program should not put genuine refugees in a position of legal disadvantage.
5. In addition to asylum, the withholding of deportation and exclusion provisions of Section 243 of the Immigration and Nationality Act should apply to those being removed according to the special procedures concerning the visa waiver program.

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<sup>20</sup>See Yiu Sing Chun v. Sava, *supra* note 6.

B. H.R. 1355: Exclusion and Asylum Reform Amendments of 1993

This bill proposes to bar from entry into the United States "any alien" who uses "fraudulent documents" to travel here, or who fails to present upon arrival travel documents used to board a common carrier, including a person seeking asylum from persecution. While the legislation would not bar those who could show a "credible fear of persecution" upon return, the procedures by which this determination would be made are summary in character. Decisions would be made by low-level INS inspectors at airports without an evidentiary hearing or an administrative appeal, and with only extremely limited judicial review.

Substantial changes would be needed to render this bill compatible with international and constitutional standards. At least 15 key points should be addressed.

1. Such a system should concern only "manifestly unfounded or abusive applications for asylum" in accordance with international standards.<sup>21</sup> Such applications should "be defined as those which are clearly fraudulent or not related to the criteria for the granting of refugee status laid down in the 1951 United Nations Convention relating to the Status of Refugees or to any other criteria justifying the granting of asylum."<sup>22</sup> This formulation would require only that some evidence be presented on refugee

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<sup>21</sup>See Conclusion 30 of the Executive Committee of the UNHCR Programme.

<sup>22</sup>Id.

characteristics. It would thus be more directly related to the actual issues of concern than the possession of valid travel documents and/or the manner of entry.

2. Any person who indicates a fear of return should receive a written description of the criteria and procedures for applying for asylum and withholding in the United States.
3. Any person who wishes to apply for asylum or withholding should be provided access to legal counsel and the UNHCR, if so desired. A list of available free legal services should be provided to applicants as early as is feasible, and an opportunity accorded to contact counsel.
4. The adjudicators in such a system should be specially trained Asylum Officers. This would be best accomplished by a statute establishing the current Asylum Corps of the Immigration and Naturalization Service. The Asylum Corps was established by rulemaking in 1990 as an office of professional adjudicators separate from the enforcement activities of the immigration agency. Given the grave nature of the interests at stake, adjudicators under this summary exclusion procedure should be Senior

Asylum Officers who are attorneys, and who have served for two years as Asylum Officers.

5. A uniform questionnaire should be utilized, to be completed by the applicant and used as the basis for the oral interview, at which the individual should be given the opportunity to present any pertinent witnesses or evidence. The interview should be conducted in such a manner as to provide an asylum seeker an opportunity to present his or her claim.
6. Prior to a decision denying asylum and withholding, a written notice of intent to deny shall be provided, setting forth reasons which the applicant should be given a reasonable opportunity to rebut. This pre-denial notice procedure is currently being used in Asylum Officer determinations.
7. A decision denying asylum should be in writing and should set forth reasons in sufficient detail so as to render an appeal meaningful. A denial should not be based on the alleged insufficiency of the evidence presented, including that the only pertinent evidence is the uncorroborated statement of the individual.



8. A Senior Asylum Officer should be empowered to grant asylum and withholding in manifestly founded cases, and to order release pending adjudication in the normal asylum procedure for individuals who present substantial claims for protection.
9. An applicant should have to right to appeal by requesting review and should have an opportunity to submit a statement on appeal.
10. Competent and adequate interpretation and translation should be provided to the applicant at every point concerning the submission of his or her case.
11. The appeal should be decided promptly by an Asylum Appeals Officer attached to the Executive Office of Immigration Review. Expedited notice and an opportunity to object to the use of the summary exclusion procedure should be given by the Asylum Appeals Officer to the State Department.
12. There should be no limits on the opportunity to seek judicial review of an adverse agency decision. The bill's limit on habeas corpus and other forms of action may be an unconstitutional suspension of the Great Writ (Article I, Section 9) or denial of judicial review.

13. Individuals subject to these procedures should be permitted to remain in the United States pending a final determination of their status. In cases where individuals are denied asylum and withholding as manifestly unfounded, they would be subject to exclusion and immediate deportation under the Immigration and Nationality Act.
14. Individuals subject to these procedures who are detained, should be subject to the release authority which permits early parole for those applicants with substantial claims. (See recommendation 8). Currently, INS' Asylum Pre-Screening Officer (APSO) program provides for the release of arriving detained asylum applicants who can demonstrate a "credible fear" of persecution.
15. Those excluded under these procedures should not be removed without an advance assurance of acceptance in the place of contemplated return. Such a procedure would avoid the phenomenon of "refugees in orbit" (the shuttling of asylum seekers from airport to airport), and possible return to a place of persecution.<sup>23</sup> This arrangement could be made on a case-by-case basis as in the general deportation procedure (see Section 243(a) of the

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<sup>23</sup>See Amanullah and Wahidullah v. Cobb, 862 F.2d 362 (1st Cir. 1988).

Immigration and Nationality Act) or through bilateral or multilateral agreements such as the Dublin Convention in Europe.

C. H.R. 1679: Asylum Reform Act of 1993

This bill would create a new "non-refoulement" status for those who could demonstrate that it is "more likely than not" that their life or freedom would be threatened as refugees. Those granted such status are exempt from return to the place of persecution (but only that place), receive authorization to work, and may request permission to travel abroad. Strict deadlines are prescribed for filing a notice of intent to apply (7 days after arrival) and for making the application (30 days after filing the notice of intent), unless the individual can establish "clear and convincing evidence [of] changed circumstances" in the country in question. Hearings on the claim generally are to commence within 45 days after the application is filed, and a transcript shall be made available not later than 10 days after the hearing is completed. The "non-refoulement officer" is to render a determination not later than 30 days after the hearing. Summary dismissal is authorized for those applicants who fail to appear.

There is no administrative appeal under this scheme and non-refoulement would be an exclusive remedy. An individual granted non-refoulement status may apply for and receive asylum status after one year under the same persecution standards, at which time the spouse or child of an individual may receive derivative status. Filing fees would be authorized for non-refoulement and asylum applications.

This sweeping proposal would have to be fundamentally re-cast for it to be compatible with international and domestic standards and legal obligations. While aspects of the proposal are intriguing -- a streamlined and consolidated first instance determination procedure, establishment of a list of available free legal services for indigents, and positive group recognition procedures -- other elements render the proposal extreme and unduly antagonistic to the rights of genuine refugees. Six basic points are worth note:

1. International refugee standards must not be ignored. A "more likely than not" standard concerning severe persecution is far more demanding than the "well-founded fear of persecution" standard utilized in the refugee treaties and incorporated into the current asylum procedure. See INS v. Cardoza-Fonseca, supra note 1. Such a deviation from international standards would be unwarranted.
2. Categorical exclusions from protection, including those occasioned by missing filing deadlines, would cause genuine refugees to be returned to places of persecution without due regard to the individualized assessment required under international and U.S. law. Decisions involving grave individual interests would be based not on humanitarian need, but rather on mistake, inadvertence or neglect. Denials of protection could result from

an inability to secure the assistance of legal counsel within the brief periods permitted. Such outcomes would be unconscionable.

3. Insufficient regard is given to the circumstances under which changes in conditions in the home country or with the situation of the individual himself or herself may give rise to a compelling claim for refugee protection.<sup>24</sup> Rather than to be accorded the benefit of the doubt, as provided for under international standards,<sup>25</sup> the provisions establish virtual presumptions, sometimes conclusive, against asylum seekers.
4. The absence of an administrative appeal renders the proposed procedures inadequate under international standards (see the analysis of H.R. 1355).
5. The introduction of a new non-refoulement status would create uncertainties in terms of travel and freedom of movement for refugees and deprives them of the possibility of uniting early with close family, who themselves may be in situations of danger. These and other such burdens on a humanitarian remedy are improper.

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<sup>24</sup>See UNHCR Handbook, supra note 7, at paras. 194-96.

<sup>25</sup>See UNHCR Handbook, supra note 7, at para. 196.



6. The introduction of a new, complicated diminishment in protection is hardly likely to achieve a more disciplined process. Instead, it signifies a regrettable withdrawal from the developing international humanitarian consensus on protection, a particularly disturbing trend given recent harsh arrangements made by U.S. officials for Haitian boat people.

#### VI. Application to a Case

How would enactment of these proposals affect genuine refugees? Take the case of R., an Iraqi Kurd who joined the Patriotic Union of Kurdistan (PUK) in May of 1985 when he was fifteen years old to demonstrate his opposition to the dictatorship of Saddam Hussein.

In July 1987, a group of plain-clothed militia men came to R.'s house in the middle of the night to arrest him. Failing to find him at home, the men ransacked the house, beat his family members and took his father away for questioning. Three months later, R. learned that his father had been killed. Fearing that he too would be killed, R fled to Iran in December 1987.

After several months in a refugee camp R. decided to leave Iran because of harsh and austere conditions in the camp. He purchased a false passport with a United States visa and a plane ticket bound for the United States, and he arrived without documents at JFK airport on May 17, 1990, via London. Upon landing in the United States, he was

incarcerated at an immigration jail in New York for over a year, until he was granted asylum on August 23, 1991, and released.

If, under H.R. 1153, the U.S. had established pre-inspection facilities in London, R. would have had to apply for asylum in the United Kingdom, a potentially benign outcome. Had pre-inspection facilities been established in Teheran, however, R. would have been condemned to continuing mistreatment in Iran. Such facilities should thus not be sited in the countries that produce refugees or that fail to respect their fundamental human rights.

Also, genuine refugees such as R. should not be subjected to prolonged detention when they seek asylum in the United States. The immigration authorities' scarce detention space should be reserved for those who are likely to abscond or pose a danger to the community. At a minimum, genuine refugees should have an early opportunity for release pending determination of their claims.

Summary procedures at the airport in New York, as described in H.R. 1355, could have resulted in R.'s return to Iran or even Iraq, particularly if he were not accepted back by the authorities in London. The restrictive criteria established in the Asylum Reform Act of 1993 would condemn refugees like R. to increased uncertainty, prolonged separation from close family members, and possible return to Iraq -- an exceedingly cruel, perhaps fatal, outcome.

## VII. The State of Asylum Adjudication in the United States

As of April 2, 1991, a corps of 82 Asylum Officers had been recruited, trained and deployed under final rules to implement the 1980 Refugee Act. Another 68 Asylum Officers were added to the corps in March 1992, for a total of 150 adjudicators.

A Resource Information Center (RIC) has been established to disseminate information about countries of origin of asylum seekers and to reduce adjudicators' reliance on State Department information. The mission of the RIC is to gather existing information on country conditions. The RIC staff acquires information from sources such as the Lawyers Committee, Amnesty International, Human Rights Watch, and others. This information is then made available to Asylum Officers.

The former asylum system was widely perceived as distorted by foreign policy and immigration control considerations. There had been unjustifiably low approval levels over the past decade for certain national groups, such as Guatemalans (1%), Haitians (1%) and Salvadorans (3%). Primary objectives of the new rules are to ensure expeditious adjudication of asylum applications, to improve adjudicator training, and to better insulate adjudicators from foreign policy and immigration enforcement considerations.

Preliminary progress has been made in achieving the objectives of the new system, but implementation has been slow. Of the current corps of 150 Asylum Officers, many were recruited from outside the INS, including several lawyers. But many of the most promising candidates have departed, and morale is reportedly low due to workload pressures and inefficiencies, as well as insufficient resources.

Training programs have been more professional in character than in the past. Most practitioners agree that the new system is an improvement, although practice is uneven. They indicate that the quality of Asylum Officers has improved, resulting in more probing interviews.

Lack of resources and competing responsibilities, however, have kept the asylum corps from emerging fully as a credible adjudication system. Delays are rampant throughout the system. Asylum Officers are under increasing pressure to turn out decisions as quickly as possible. Because of the pressure to interview new cases, there is a growing delay between case interviews and decisions. Many applicants have had to wait for over one year from the time an application was filed until an interview is obtained. In addition, practitioners complain that work authorization is not being granted to claimants within the prescribed 90-day period.

A growing backlog of cases may compromise the integrity of the system. Statistical information provided by INS indicates that at the end of September 1992 there was a backlog of 215,772 claims in the seven regional asylum offices. Also, 103,447 new asylum applications were filed in fiscal year 1992.<sup>26</sup>

The backlog must be addressed. However, while efforts to reduce -- and ultimately eliminate -- the backlog are commendable, thorough and just adjudications should not be sacrificed. There is a need to streamline the overly complicated provisions in the current system. Additional Asylum Officers and clerical workers are needed as

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<sup>26</sup>About 20,000 of the cases decided in 1992 by Immigration Judges in deportation or exclusion proceedings involved claims of asylum or withholding.

well to assist the adjudicators. The best way to ensure fair and prompt determinations of asylum applications is to improve management and to increase efficiency as well as the investment of resources in the system.

The regulatory effort to separate asylum adjudication from enforcement functions poses a critical challenge to an agency that is generally regarded as charged with conflicted missions -- apprehension, detention and removal of unauthorized aliens on the one hand, and provision of service to those entitled under law to immigration benefits. The humanitarian character of asylum adjudication presents this conflict in its sharpest terms, and has caused some, including this commentator, to question whether this responsibility should be organizationally removed from INS.

One glaring procedural defect in the new INS asylum system caused by lack of resources is the failure to provide interpreters for asylum applicants. Interpreters were provided when asylum adjudications were considered to be part of INS' examinations responsibilities. Indeed, interpreters are provided in virtually all asylum procedures around the world in recognition of the basic facilitating role they play in achieving access to a status determination procedure. However, sufficient resources were not made available by INS to continue the provision of interpretation services. Interpreters must be provided by applicants, and, if unavailable, adjudications are postponed until such time as an applicant can furnish a competent interpreter. This outcome raises the irrational prospect of deserving refugees who cannot obtain asylum because they cannot furnish a competent interpreter, or spurious applicants who secure an indefinite stay in the United



States with permission to work through the device of not supplying an interpreter. Such a system is unworkable, not to say unfair, and must be remedied immediately through the provision of additional resources.

Without the immediate investment of additional resources, the new asylum system is destined to fail. Such resources, moreover, should not come from the imposition of a pre-paid filing fee required on asylum requests in order to preserve full access to asylum by refugees in accordance with international standards. Rather, the resources should come from general revenues, including enhanced filing fees for other types of immigration applications and petitions if necessary.

On the related issue of detention, we estimate that currently about 50,000 aliens are detained each year in INS facilities across the country. While some are criminal offenders awaiting deportation, we estimate that about 10,000 are persons seeking political asylum in the United States because of fear of persecution in their home countries. These groups are sometimes confined together due to lack of available space. According to a January 1991 GAO report, the INS has failed to meet the increased need for additional detention facilities.

According to the GAO report, between 1986 and 1989, INS detention expenditures increased from 82 million to 169 million dollars; over the same period, the number of criminal aliens arrested by INS increased from 12,500 to 30,500. INS has projected that it will need to incarcerate about 60,000 alien offenders in 1991 in order to further the mandate of Congress to remove criminal aliens from the United States.

Currently, INS is capable of detaining 6,259 individuals at any one time. Yet much of INS' scarce detention space and program resources are devoted to detaining innocent asylum seekers upon arrival in the United States. In 1986, the United States and other members of the governmental Executive Committee of the Office of the United Nations High Commissioner for Refugees urged " . . . in view of the hardship which it involves, detention should normally be avoided." But INS, until last year, has continued a costly policy of automatically and unnecessarily detaining many individual asylum seekers.

Only recently, therefore, has INS initiated a release program based on rational criteria. Those applicants with substantial claims of persecution are eligible for release as long as they can show that they are not likely to abscond and pose no danger to the community. Since the inception of the program, INS attorneys have interviewed 1,551 arriving asylum seekers and recommended release for 507 (33%). While implementation has been somewhat uneven, nothing should be done to undermine the essence of this beneficial new program. Indeed, it should be codified in statute.

A well-conceived and carefully administered release program that works closely with the community can satisfy the government's interests in preventing absconding and targeting for detention those who pose dangers to the community, as well as avoiding the unnecessary detention of refugees. As a matter of conserving scarce resources, the time has come to put the INS detention policy into better alignment with the Service's mission of humane treatment for deserving aliens and targeted enforcement in respect of others.

### VIII. Conclusion

Notorious incidents inspire bad policy. Recent tragic events have been cited as justification for re-invigorating proposals initially made last year to limit access to U.S. immigration procedures by asylum seekers abroad, accelerating the hearing procedures to exclude such individuals at U.S. airports, and even diminishing the asylum remedy itself. Each approach could compromise the protection of genuine refugees and render the humanitarian remedy of asylum another casualty of these terrorist attacks.

The U.S. immigration process surely requires additional discipline and there should be an early high-level review of immigration enforcement by the new Administration to ensure that policies are both effective and humane. Specifically, it will be incumbent on the Administration to establish an asylum adjudication procedure that is capable of deciding claims fairly and expeditiously in order to recognize genuine refugees and avoid attracting spurious claimants. Of course, resources will be needed to accomplish this objective. Any undue expenditures imposed on local communities by virtue of the adoption of just asylum procedures should be reimbursed by the federal authorities.

Fundamentally, the human rights of genuine refugees must not be violated in the name of "reform." More refined forms of enforcement than the current proposals are feasible and preferable. If we do not resist such politically expedient measures, then we will only undermine the possibility of achieving a humanitarian consensus regarding the protection of refugees.

Mr. MAZZOLI. Mr. Leiden.

**STATEMENT OF WARREN R. LEIDEN, EXECUTIVE DIRECTOR,  
AMERICAN IMMIGRATION LAWYERS ASSOCIATION**

Mr. LEIDEN. Thank you, Mr. Chairman and Mr. McCollum. It is good to see you today. I appreciate the opportunity to testify in what I think is a very important issue and one that our membership around the country has some expertise on, often in a pro bono capacity.

It sounds to me like this morning's hearing has spent a lot of time talking about the importance of granting protection to refugees, and I am not going to belabor that point. I want to cut right to our support for reform of the asylum process.

I think that the best way to look at reform is to analyze, as I do, two problems. One, is an acute, sharp problem, particularly at the JFK Airport, where a large numbers of people are coming in. They are overloading the system.

It is almost like a lottery. If somebody comes in and there is a limited number of beds that have been assigned for detention of people, if you pass that number, you "get out of jail free." A portion of those people never show up. Some do show up, and then qualify for asylum, but some do not. So there is an acute problem at the airports.

Second, deserving of the attention of your bills, and I think this is what they addressed, is what I would call the regular asylum program, and its implementation under the new regulations, which is little more than 1 year old. I think this is an area that does need reform. With a year of solid experience under the belt, I think it is time for a change, time for reform.

The problems have been identified or are certainly much more visible. I think it is not just an Immigration Service problem, but it is also a problem with the immigration courts of the Executive Office for Immigration Review. Those two areas need to be looked at.

Now, specifically, let me address the acute problem of the refugees at the airports. In large part, I think this is a management problem. I think it is a question of how existing resources are used to promptly make determinations of these cases.

It is also a question of a detention and a release policy—who is getting detained; who is getting released; and where people are being held. Those are the areas that I think that need the most attention.

We would recommend, and we have in our written testimony, and through legislation, if that seems appropriate, reform so that individuals who arrive at ports of entry, who either have no documents or the documents are not good, and who claim asylum, be given the most expeditious examination as possible by a highly trained or a senior asylum officer. Then, an immediate or a very prompt decision can be made to determine who the abusers are and who the frivolous cases are.

There can be a prompt and quick accelerated immigration court review of that determination, if it is requested by the person. Again, this is to weed out the frivolous people, the abusers, and

therefore, allow protection to be granted to bona fide and deserving refugees.

We think that this, coupled with a wisely managed detention release and transfer policy, would really be a combination that could come together to largely eliminate what is perceived as a problem at the airport, and especially at the JFK Airport.

In connection with the bill that has been introduced specifically on this problem, we would like to see, some modifications. We are fearful that maybe it goes too far at this point; and that some aspects of it may result or may be more geared to denying claims that should not be denied, as opposed to really focusing on the frivolous claims.

We are concerned about the reduction or the lack of review in these cases. That that would increase, at this point, the danger of returning refugees to persecution.

However, we do think that taking measures that result in expeditious approvals, or expeditious examinations at the airports, is an important measure to take. If Congress needs to enact legislation to make that happen, then we think it should.

I could say more and I could go into much more detail, but I would say that for now, in case it comes up in questions.

Mr. MAZZOLI. Thank you very much, Mr. Leiden.

Mr. LEIDEN. I'm sorry, Mr. Chairman. If I may just in a few moments address the regular asylum program.

To me, the most important thing with the regular asylum program is that they do not have control over the incoming cases. The incoming caseload is not receiving prompt adjudications. Some cases go for 2 years or longer, and that needs to be the focus.

What we would recommend, based on the experience and expertise, is support for the process that is begun already in the Justice Department for administrative reform.

The first goal is to gain control over the incoming cases, and measuring that by the promptness of adjudications.

Mr. MAZZOLI. Ms. Sale talked about that.

Mr. LEIDEN. I think there are a number of ways to do this. One is to first have a better focus on management of the caseload from the lessons that have been learned from recent experience. There is software that could be used now that would make things much more efficient.

There are nonasylum tasks that asylum officers are performing, such as issuing employment cards or issuing deportation orders to show cause. We could get a lot more "bang for our buck" out of the asylum system, if you will, through some of these changes that are now under consideration by the Justice Department.

In addition, Mr. Chairman, your bill looks at this as well; that is, streamlining the process, and looking at aspects and procedures or subtasks within the process that can be either eliminated or streamlined or expedited.

Then, finally, is the issue of allocation of resources. There is a current capacity to decide a certain number of deportation and asylum cases, or exclusion and asylum cases. This capacity is not being put where it should be. The existing resources ought to be put on the incoming cases, the new cases, and not on cases that



have been sitting around for 5 or 6 years, while the new incoming cases continue to grow.

We think that through these measures and only after these measures have been explored, in a very short time period, that then perhaps increased funding should also be looked at, on a temporary basis or a permanent basis. However, we should not look immediately to changes in funding. We should look first to efficiencies, streamlining, and reallocating the current resources.

After that is done, and after we have figured out the most efficient and accurate system, then I think that funding increases, if they are needed, could be looked at.

Your committee can provide a very helpful incentive to the administrative process of reform by setting a deadline, and telling the Justice Department. Perhaps in legislation, or maybe merely in a letter.

Mr. MAZZOLI. It would start out with a deadline for the Commission to be appointed. We would start there.

[Laughter.]

Mr. LEIDEN. I can see your committee being impatient if this dragged on for a long period of time. I think that within this year the administration, I will recommend and be able to make administrative changes before changes are made in the statutory law.

Your bill, addresses the kinds of things that need to be addressed in terms of prompt adjudications, streamlining the system, and more efficient use of resources.

There are some other points in your bill, as I mentioned in my written testimony, that are steps that do not need to be taken yet. I would recommend that a time period, maybe until the end of this Congress, be given for the administration to make and implement changes.

If it cannot be done in that time, then I think it is right for Congress to step in and say, "You had your chance, and now that time is over." However, with only a year of experience under the new regulations, I think it is appropriate to allow the administration to change the administration of the program.

Finally, under the preinspection bill, we warmly welcome improvements that will speed inspection through international airports. We have already communicated to Mr. Schumer that we are very interested in his bill. There are safeguards that we would like to recommend in addition to the ones already included in last year's bill for refugees. These are some safeguards for the returning lawful permanent residents, immigrants and nonimmigrants.

We have identified, from the most recent immigration statistics, that only about 100 individuals were excluded from the airports of the countries most likely to be visited with a preinspection station. This is such a small number that, an immigrant or a nonimmigrant or a lawful permanent resident lose the opportunity to prove their eligibility for admission, as the burden is on them to prove they are eligible. We have recommended some safeguards to Mr. Schumer to allow this to happen.

Thank you again, and I would be happy to answer any questions.

Mr. MAZZOLI. Thank you very much, Mr. Leiden.

[The prepared statement of Mr. Leiden follows:]

PREPARED STATEMENT OF WARREN R. LEIDEN, EXECUTIVE DIRECTOR,  
AMERICAN IMMIGRATION LAWYERS ASSOCIATION

OPENING

Chairman Mazzoli and distinguished members of the Subcommittee:

I am pleased to have this opportunity to testify on behalf of the American Immigration Lawyers Association (AILA) concerning legislation that would significantly amend our asylum laws and affect the ability of asylum-seekers to seek protection in the United States from persecution.

The American Immigration Lawyers Association is a national bar association of over 3,500 attorneys who practice immigration and nationality law, representing individuals, families, employers, and asylum-seekers. Founded in 1946, AILA has thirty-three chapters nationwide and is an Affiliated Organization of the American Bar Association.

Many AILA attorney members have experience representing persons who seek asylum in the United States, often on a *pro bono* basis. We observe first-hand the strengths and weaknesses of our asylum program and know the successes and shortcomings in its current implementation.

On behalf of those refugees whose best hope for protection from persecution is in the United States, we are deeply interested in an asylum program that is fair, accurate, and efficient.

We greatly appreciate this opportunity to comment on the current asylum system and to make recommendations for improvement.

## SUMMARY

1. The asylum program poses no terrorist risk to the public.
2. We need a comprehensive program that is fair, accurate, and efficient -- that protect refugees from persecution but does not act as a magnet for illegal immigration.
3. The "airport" problem can be resolved through proper administration of the asylum program.
  - a. A rational, uniform detention and release policy and expedited adjudication of asylum claims would deter illegal immigration without compromising refugee protection.
  - b. The means of escape should not become the litmus test for legitimacy -- reliance on fraudulent documents or alien smugglers is not contrary to a well-founded fear of persecution.
4. The "administration" problems of the regular asylum program require comprehensive review and improvement of its operations.
  - a. The Department of Justice must genuinely back the asylum program and provide the leadership and resources it needs to succeed.
  - b. The Department of Justice needs to execute a comprehensive improvement of the asylum program -- one that ensures control over management of incoming cases, prompt adjudication, and proper allocation of resources.

H.R. 1153: IMMIGRATION PREINSPECTION ACT OF 1993

1. The provisions for expediting airport processing would be welcome improvements over current practice.
2. The visa waiver program should be made permanent, but Congress should be careful to monitor the consequences of the exclusion provisions.
3. The preinspection program should better ensure the protection of refugees and should include safeguards for lawful permanent residents, immigrants, and nonimmigrants entitled to come to the United States.
  - a. The bill should limit preinspection stations to countries from which the United States has not recognized refugees in recent years.
  - b. There should be an opportunity for lawful permanent residents, immigrants, and nonimmigrants to establish their eligibility for admission to the United States.
  - c. The number of persons needing special attention are relatively small.
  - d. Monitoring of the preinspection sites should be built into the program.
  - e. Congress should continue to investigate the fiscal and international implications of preinspection

H.R. 1679 -- ASYLUM REFORM ACT OF 1993

1. The legislation takes asylum reform in the right direction, but we would recommend that the Executive Branch be given an opportunity to reform the current system consistent with this goal.
2. The bill is properly concerned with keeping the determinations process moving, but inflexible deadlines could result in arbitrary denials.
3. The higher standard of proof risks more denials, but without any real improvements in administration.
4. It is not necessary or efficient to eliminate administrative review.

H.R. 1355: EXCLUSION AND ASYLUM REFORM AMENDMENTS OF 1993

1. Summary exclusion does not recognize the realities of refugee flight.
2. By barring any administrative or judicial review, H.R. 1355 strips away all protections against a wrongful determination and greatly risks returning refugees to countries of persecution.
3. Judicial review is a necessary to protect against life-threatening agency error.
4. Expedited examinations and removal should be directed at frivolous claims for asylum, based on the merits of the case.
5. Release from detention should be available in low risk cases.



## INTRODUCTION

Mr. Chairman, this hearing on asylum reform is very timely. Acute problems with non-refugee arrivals at the New York JFK airport and complications in the operation of our asylum program have become, quite properly, the subject of recent interest and attention.

At first blush, it is not a pretty picture. Our asylum laws are under attack by sensationalist media, hate groups, and anti-immigrant organizations that would lead the public to believe that asylum is somehow a security threat to the United States. Also, as currently administrated, the asylum program is unacceptably vulnerable to some non-refugees who apply for political asylum as a means to circumvent legal immigration requirements and stands as a criminal commercial opportunity for alien smugglers and fraud facilitators. Moreover, despite the best of efforts and intentions, the administrative asylum program is struggling in key respects and needs more organizational support and attention for its management to be effective.

The picture, though serious, is not really so bleak. To begin with, asylum is *not* a security threat. The connection made between asylum and recent criminal acts is irrational and ungrounded. Also, while there are some serious problems with how asylum is now handled in this country, those problems are manageable when approached in a thoughtful and precise manner. If broken down into its respective components and properly analyzed and improved, the asylum program can be entirely workable and its shortcomings can be remedied.

From our perspective, the operational problems can be distilled into two areas. One is the acute problem of non-refugee arrivals at our international airports. As the Subcommittee is well aware, there are persons who are not legitimate asylum-seekers who exploit the delays in the handling of asylum claims and the poor management of detention space to immigrate illegally. This problem is especially visible in New York, though it has been resolved elsewhere.

We are concerned that, in addressing the problem with non-refugee arrivals, we run the very real and probable danger of returning legitimate refugees to persecution if an overbroad form of "summary exclusion" is enacted. We maintain that it is possible to devise a legislative solution of expedited examination and exclusion that deters abuse of the asylum system *without* risking the return of true refugees to persecution -- a system that rapidly identifies and accelerates the exclusion of frivolous cases before they get into the asylum system. In this testimony, I will discuss how the "airport problem" can be addressed through reforms that aim at the cause, and not the symptoms, of the abuse of the asylum system.

The other area of concern relates to the programmatic problems in regular asylum processing and case management, and we encourage your committee to actively oversee this area. We support the Department of Justice's comprehensive review and evaluation of asylum claims handling. Our view is that INS and EOIR together must move quickly

- o to set goals that will enable them to achieve complete control over all incoming cases,
- o to set their priorities to achieve prompt adjudication of incoming cases, and
- o to allocate to the Asylum Branch and immigration courts the personnel, staff, and resources they need to function properly.

We are not unmindful, however, that the current administrative asylum program is a "start-up" operation. We appreciate that the Asylum Branch is at this stage largely operating on theory and must suffer some "growing pains" as it gains experience and learns what works. Nonetheless, we believe that INS now has the experience to streamline and improve its administrative asylum program and from an operational standpoint, is well poised to take charge of and grapple with the challenges before it. With the administrative asylum program at this stage in its development, it would be premature to make legislative changes now that INS has the tools it needs to forge long-awaited solutions. We are reluctant to see any legislative reform of asylum processing and case management take place at this time because INS and the public are now forming a joint venture to resolve some of the most troubling problems.

We believe that Congress should not attempt any legislative correction to asylum processing and case management at this time, but should allow INS and the nongovernmental community the chance to benefit from the new opportunity for cooperation and together address these problems administratively. However, we do welcome Congress setting deadlines for progress to be made, and returning to this topic a few months from now to gauge the development of administrative asylum reform.

## REMARKS AND OBSERVATIONS

*1. The asylum program poses no terrorist risk to the public.*

As the members of this Subcommittee are aware, our asylum system has received a lot of bad press lately. Recent events have elevated public concern that the United States is not immune from terrorism, and media hype and hate groups have painted all foreign persons as vague threats to public safety. One by-product of the recent tragedies has been a strained, but not logical connection between asylum and terrorism.

The asylum program is not a threat to the security of the United States. Our asylum laws and our asylum system are quite demanding and require extensive scrutiny of the fraction of would-be entrants who seek asylum protection each year. Interestingly, a typical tourist breezes through immigration inspections with very little government contact, and individual scrutiny is minimal. In contrast, asylum-seekers at U.S. airports are subjected to primary and secondary inspection, they undergo a high level of scrutiny of their identity and background, they are interviewed and cleared by several government officials, and are often detained for lengthy periods. In each instance, the request for asylum is supposed to trigger a multistage procedure of examination and inquiry.

Clearly, this Subcommittee and the Congress should take every reasonable step possible to prevent terrorism from reaching our shores. This does not, however, require that we curtail the availability of asylum or rewrite our asylum laws when they do not relate to the any real threat to the public safety.

*2. We need a comprehensive program that is fair, accurate, and efficient -- that protects refugees from persecution but does not act as a magnet for illegal immigration.*

Americans want undesirable elements intercepted before entering the United States through any immigration program, whether they are terrorists or frauds or simply persons who attempt to immigrate when they are not entitled to. Of course, we do not want non-refugees to use the asylum program to circumvent our immigration laws.

However, to intercept non-refugees, we must have an asylum program that is fair, accurate, and efficient. When the asylum process is inefficient (or designed to fail, as at New York's JFK), the unscrupulous can use asylum as a means to circumvent our immigration laws and enter the United States wrongly. Juicy news reports that paint

political asylum as the magic "password" to beat the system consistently fail to observe that the government, not the law, provides the magnet for illegal immigration.

Clearly, we need an accurate program because we do not want to return genuine refugees to persecution and we do not want non-refugees to use the asylum program to circumvent our immigration laws. We also need a fair program, because our nation is founded on principles of fairness and due process. We need an efficient program, so that refugees are protected, non-refugees are removed quickly, and the public enjoys a secure and cost-effective asylum program.

Insofar as asylum reform is concerned, there are two problem areas that must be addressed: (1) the breakdown of the asylum process at New York's JFK airport and (2) the administrative problems of the regular asylum program that have been identified in the first year's experience of the new INS program and last decade's experience of immigration court adjudications.

3. *The "airport" problem can be resolved through proper administration of the asylum program.*

*a. A rational, uniform detention and release policy and expedited adjudication of asylum claims would deter illegal immigration without compromising refugee protection.*

There has been considerable attention paid recently to the filing of frivolous asylum applications at New York's JFK International Airport and some other airports. "Political asylum" has been depicted as of late as a term of criminal art.

The truth, however, is not that our asylum laws are broken, but that their administration must be improved. For example, JFK is one of the busiest international airports in the world, and by definition it will have a relatively high volume of persons looking to enter the United States legally and illegally. Yet, curiously, New York INS limits itself to a remarkably small detention capacity, and that capacity is nearly always filled. In imposing this limitation, the New York District Director has implemented a "first-come, first-detained" policy and apparently refuses to distinguish between credible and incredible claims for asylum. The end result: once the detention center is full, all asylum applicants -- *all* -- are put on the street. In New York, this policy results in legitimate refugees being incarcerated and frivolous asylum applicants being set free because the government will not differentiate between them.

For us, there is a special irony in this policy. One of our Association's ongoing frustrations with INS is the irrational, non-uniform detention and transfer practices of certain districts. All too often, our members are forced to complain about long-term

detentions and transfers that remove legitimate asylum-seekers to distant locations, far from their family, their evidence, and their counsel. We generally complain that INS is too ready to incarcerate apparent refugees for extended periods of time and too willing to shuffle them around between detention centers. However, in New York, some asylum-seekers, whether they have strong cases or make apparently frivolous applications, are simply released.

It has not taken long for alien smugglers to deduce that the government is providing them with a window of opportunity. Despite news reports and INS news releases, it is not recitation of the magic words "political asylum," but rather INS' willingness to turn a blind eye, that sets these asylum abusers free. If INS would prioritize its cases, uniformly operate the Asylum Pre-Screening Officer (APSO) program, and manage detention space well for those cases that warrant it, we would make great strides toward discouraging the use of asylum to immigrate illegally. When INS has done this -- as it did in Los Angeles, for example -- the flow of frivolous asylum applications dried up.

We share the Subcommittee's concerns that frivolous asylum claims impose unnecessary costs on the government, burden affected communities, and undermine the integrity of our country's asylum program; and we strongly desire to see abusers and alien smugglers thwarted in their efforts. However, we must do so in a way that does not jeopardize the welfare of true refugees fleeing persecution and is in accord with our nation's international and humanitarian commitment to make asylum available to legitimate refugees. We must employ a process that can balance our interests in removing frivolous cases expeditiously without denying refugee protections to persons who deserve them.

The solution lies in prompt adjudication. If the problems at the airports stem from exploitation of asylum processing, then accelerate adjudications in ways that do not undermine existing protections for legitimate asylum-seekers. First, identify and summarily reject frivolous asylum claims. Second, remove the window of opportunity by eliminating the protracted delay between the time a person applies for asylum and the time INS (and EOIR) finally adjudicate a claim. Third, institute a reasonable and consistent detention and release policy that would detain only those cases where there is a threat to the public security or safety or a high risk that the alien will abscond.

We would recommend an approach that provides expedited examinations to weed out frivolous applications for asylum. We can imagine of a program in which an airport arrival with improper documentation who requests asylum is immediately referred to a "Senior Asylum Officer" or SAO to decide if the claim is frivolous. If the SAO finds that it is, the applicant is summarily excluded. It would then follow that if the applicant sought review by an "asylum immigration judge" or AIJ, the AIJ would conduct an accelerated review on the frivolousness determination and confirm the final exclusion order if



appropriate. By quickly removing the aliens from the system who *cannot* be refugees, there is administrative efficiency, reduced caseload, and no more window of opportunity for non-refugees to exploit the asylum program.

We believe that this type of system could be set up administratively under current law, but we appreciate that the Subcommittee may feel that legislation is necessary to ensure direct action.

*b. The means of escape should not become the litmus test for legitimacy -- reliance on fraudulent documents or alien smugglers is not contrary to a well-founded fear of persecution.*

In the summary exclusion bill (H.R. 1355) and, to a lesser degree, the pre-inspection bill (H.R. 1153) are under consideration today, one could conclude that there is a presumption of "illegitimacy" whenever an asylum-seeker uses improper documentation to come to the United States.

It is critical that we not become preoccupied with the means of escape -- whether it be misdocumentation or the employment of alien smugglers. The means of escape should not become the litmus test for legitimacy. To do so would deny the reality that persons often *must* use fraudulent documents to escape persecution or rely on unsavory characters to flee for safety. Seldom can persons fleeing for life or freedom obtain valid travel documents from their persecutors; seldom can they be choosy about whose help they rely upon. For many refugees, their avenue out is not selected by them, but for them, by their circumstances, and a refugee may very well have to falsify a passport or innocently follow a smuggler's instructions to destroy a travel document in the course of escape.

As Congress considers legislative solutions to asylum problems, it must be mindful that the use of a fraudulent document can be powerful evidence that the alien *legitimately* qualifies for asylum. The focus of the inquiry and the decision must be, not on the documents themselves, but on the bearer of those documents.

*4. The "administration" problems of the regular asylum program require comprehensive review and improvement of its operations.*

*a. The Department of Justice must genuinely back the asylum program and provide the leadership and resources it needs to succeed.*

In contrast to the apparently acute and immediate problem at the airports, there are less pressing but perhaps more valid concerns with asylum adjudications generally. Those problems are administrative in origin and resolution. We find it curious that, while the press coverage has focused almost exclusively on how aliens abuse the asylum system, it has thus far failed to mention how the system is being undermined by managerial failings.

Asylum adjudication is a service that INS is obligated by its mandate to provide the public. After years of dissatisfaction with that service, Congress passed the Refugee Act of 1980 and did away with the old, politicized system of asylum adjudication requiring INS to establish a new program with a new approach. For all concerned with the protection of refugees, the changes were welcome.

Unfortunately, the revamped asylum program got off to a rocky start and has yet to recover. After a decade of experience under interim regulations, the Justice Department published new, final regulations in 1990. Unfortunately, the INS portion of the new asylum program was significantly underfunded -- its fiscal resources drawn from a fixed budget and without regard to projected needs of the program.

Full operations of the INS program were not achieved for some time, and there is now little more than a year's worth of experience with the new program. The program continues to struggle. Adequate funding and resources remain elusive, and the Asylum Branch is still wrestling with its place within the greater structure of INS. Asylum as a program within INS has been the victim of interdepartmental struggles within INS, especially where questions of resource allocation are concerned. In the internal jockeying for funds and resources, the Asylum Branch often gets short shrift. For example, Asylum Officers is being saddled in some regions with clerical duties that detract from the amount of casework they can do -- performing data entry, issuing employment authorization documents, orders to show cause, etc.

Also, when monies are available, they are routed elsewhere; and when special needs surface (such as the pre-screening of Haitians at Guantanamo), monies are drawn from the Asylum Offices, already hurting for support staff and interpreters. While efforts have been made to alleviate some of the more critical resource problems (e.g. last year, the RSCs were brought in help with in-processing and EADs), the underfunding persists.

At the Executive Office for Immigration Review, it appears that scant attention has been given to case management of asylum claims in exclusion or deportation. The immigration courts do not appear to be part of the integrated, interdepartment program that asylum was designed to be.

Now is the time for comprehensive review and reform. We are very much encouraged by the interest of the new Administration to work with the public to improve the asylum program and make it work. A process has already begun in which INS and interested nongovernmental organizations are working in tandem on how best to streamline the process and to cure the administrative weaknesses and failures of the asylum program. This dialogue is already generating optimism among the organizations of the nongovernmental community that, with this new spirit of cooperation, solutions can readily be found. We are also hopeful that the asylum program will benefit from the innovative problem-solving that will come from the combination of fresh insights from new INS appointments and the experience of career officers.

*b. The Department of Justice needs to execute a comprehensive improvement of the asylum program -- one that ensures control over management of incoming cases, prompt adjudication, and proper allocation of resources.*

Although many success stories are out there, INS and EOIR are still having serious difficulties keeping up with new, incoming applications and reducing persistent backlogs, and there are myriad weaknesses in their existing structure and performance. Many of our concerns are mirrored in an appendix to this testimony, "An Interim Assessment of the Asylum Process of the Immigration and Naturalization Service," published by the National Asylum Study Project (December 1992).

The most troubling problem for us is the inability of INS to keep up with these incoming cases. According to the latest estimates, INS will only process about a 30% to 50% of the new cases it expects to receive this year. That creates an astounding shortfall, and exacerbates backlogs and complicates administration of the program further.

We believe that, based on the experience of the first years of the current asylum program, the problem with keeping pace with incoming cases can be overcome. A comprehensive review of INS asylum procedures, practices, and regulations would identify a number of opportunities to streamline the process based on real examples and real experiences. For instance, installation of data processing systems in all Asylum Offices, transferring non-asylum clerical work to other examinations personnel, removing asylum staff from the preparation and issuance of employment authorization documents, eliminating Asylum Officer responsibility to prepare and issue deportation orders to show cause,

eliminating mandatory BHRHA opinion letters in all cases, permitting summary approval of deserving cases, and rationalizing the complementary roles of the INS and the INS asylum function of the EOIR immigration judges would all serve to greatly speed up, increase capacity, and reduce the cost of the current asylum program.

While we are deeply concerned about the existence of certain administrative problems and the need for significant structural and operational reform inside the asylum program, we are nonetheless reluctant to label them as irreparable failings. Rather, the program simply needs reform and improvement based on its experience.

We believe that the challenges facing the Asylum Branch are for the most part the product of inadequate support and the inevitable consequences of program development. These problems can be cured with a little commitment and attention from both the Department of Justice and the public. Every indication lately has suggested that this commitment and attention would be forthcoming from INS, and we are optimistic that meaningful administrative reform can take place.

We therefore do not believe that legislative solutions in the area of general administrative operations would be appropriate at this time. We would ask that Congress provide the nongovernmental community and the INS opportunity to explore and test solutions and that Congress set a deadline for reform and revisit the subject of asylum adjudication reform in a few months to assess its progress.

With this background in mind, our evaluation of the bills under consideration follows.

## H.R. 1153: IMMIGRATION PREINSPECTION ACT OF 1993

The Immigration Preinspection Act of 1993 proposes to do three things in particular: (1) Establish preinspection stations in a number of the foreign airports with the heaviest volume of U.S.-bound traffic. These stations, staffed by immigration officers, would expedite processing stateside by conducting screening overseas. (2) Make permanent the visa waiver pilot program, thereby expediting the entry of persons from designated countries. (3) Expedite airport processing through a number of discrete improvements, including use of electronic manifests, rendering personal examination and inspection interviews discretionary, shortening the inspection time standard, and providing for expedited citizen processing.

We commend Congressman Schumer for his commitment to expediting airport immigration processing. We are in complete agreement with the purpose underlying his bill -- the rapid and efficient movement of authorized persons traveling through U.S. airports. As any U.S. traveler returning from abroad or any visiting business professional, tourist, or family member can tell you, the processing lines at international airports are often unbearably long and can take hours to clear. The chronic delays are inexcusable, and we applaud this legislation as it fosters administrative efficiency and reduces the time it takes to enter the United States.

### *1. The provisions for expediting airport processing would be welcome improvements over current practice.*

We are especially supportive of the provisions in the bill that relate to expediting airport processing through a combination of more "mechanical" devices.

First, as any international traveler can report, there are serious and unnecessary delays for citizens and non-citizens alike when arriving at U.S. airports. It is an ongoing frustration that travelers, after having spent hours on an international flight and anxious to go to their ground destination, often must wait in line for an hour or more to clear the immigration gate and be on their way. While we appreciate the daunting task of rapidly processing airport arrivals, we cannot help but conclude that INS must simply do more to expedite airport processing. The 45 minute standard is already too long and is frequently violated at major ports of entry. We wonder if even 30 minutes is too long, but concede that such a standard may be administratively impossible at this time. Nonetheless, the imposition of a shorter, 30 minute standard would be a welcome incentive to accelerate airport processing.

Second, we are similarly supportive of making examination and inspection interviews discretionary. As everyone knows, the vast majority of persons going through immigration



checkpoints are clearly entitled to enter the United States. It is an unnecessary burden, even if it is only one on the books, to require an interview in every single case. Surely, airport processing can benefit from such streamlining.

Third, we endorse the provision that would expedite processing for U.S. citizens. Clearly, U.S. citizens both make up the bulk of airport arrivals and constitute the easiest class of passenger to pass through. INS truly needs to explore measures, such as citizen bypass, that would reduce both the administrative burden on INS and the inconvenience and frustration for arriving U.S. citizens.

Fourth, the use of electronic manifests makes complete sense to us, correcting a technological anachronism in current law.

*2. The visa waiver program should be made permanent, but Congress should be careful to monitor the consequences of the exclusion provisions.*

We similarly support the proposal to make the visa waiver program a permanent fixture in U.S. immigration law. Thus far, it appears to us that the visa waiver pilot program has been successful at eliminating unnecessary visa processing and has greatly facilitated international travel between the United States and countries with low incidence of visa fraud. Making the program permanent seems only logical at this juncture.

While the concern is still somewhat academic, we do want to remind the Subcommittee that the exclusion and deportation provisions in the visa waiver program could work some unfortunate results insofar as no review exists for such determinations. It is possible for an alien to be mistakenly denied admission or for an international traveler to innocently attempt to enter thinking a visa was not necessary. The Subcommittee should seriously consider the importance of providing some degree of supervisory or administrative review.

We must voice some concern for the restrictive language with regard to refugees under the visa waiver program. While it is vital that any visa waiver program be streamlined, we must be careful neither to contradict our obligations to protect refugees nor be unmindful that a legitimate refugee may not have any choice in the method of escape. The visa waiver program should not have more demanding standards than any other program when it comes to asylum-seekers.

*3. The preinspection program should better ensure the protection of refugees and should include safeguards for lawful permanent residents, immigrants, and nonimmigrants entitled to come to the United States.*

The concept behind preinspection is to set up special stations at the foreign airports to reduce processing time for U.S. arrivals by inspecting travelers overseas. The reasoning is twofold: (1) travelers will check-in for flights and be inspected at staggered times, rather than bottlenecks when they disembark all at once, and (2) pre-flight inspection provides immigration authorities with more time to run secondary checks on the questionable cases while the travelers are in-flight and have not yet entered the United States.

Clearly, the vast majority of people boarding for the United States each day -- citizens, permanent residents, immigrants, and nonimmigrants -- are entitled to enter and will benefit immensely from the program. On their behalf, we praise the bill.

However, while most people will benefit, there will be a number of persons who could be adversely affected by preinspection, and we are concerned about those who are eligible for admission but would be improperly turned away.

*a. The bill should limit preinspection stations to countries from which the United States has not recognized refugees in recent years.*

Commendably, the legislation anticipates refugee protection and limits preinspection stations to countries that "maintain practices and procedures" that are in accord with the Refugee Convention and Protocol.

While well intended, this ambiguous limitation could result in providing little genuine protection. Although it is a delicate subject from a foreign policy perspective, there are many nations which are signatories to international human rights instruments who do not in actuality comply with them. The Convention and Protocol are no exception, and there are signatory states from which the United States has accepted refugees in the past.

We do appreciate that the loose language of this provision is probably intended to provide some leeway on which countries to establish preinspection stations; "maintains practices and procedures" does convey a functional, and not just rhetorical, commitment to refugee protection. However, the Refugee Act of 1980 was designed to eliminate the politicization of our asylum program, and perhaps a similar approach should be taken here and an objective limitation imposed. We very much favor the provision that appeared in the bill approved by the House last year that would limit placement of preinspection stations to countries from which the United States has not admitted a refugee or asylee in the

preceding three years (although we would encourage Congress to consider lengthening that time period). In this way, we can be assured that the preinspection sites will be more "safer" and that their selection will not be swayed by the political expediences at the time a site is established.

Additionally, we would recommend a statutory requirement that all preinspection officers have some degree of asylum training before assuming their duties. A training requirement would ensure that officers are mindful of U.S. obligations and knowledgeable about the special circumstances of refugee flight, and better enable that officer to respond when asylum-seekers appear at the preinspection station.

*b. There should be an opportunity for lawful permanent residents, immigrants, and nonimmigrants to establish their eligibility for admission to the United States.*

Theoretically, every one with a valid travel document should be able to clear preinspection without incident. However, we are concerned that, as the legislation is now written, a lawful permanent resident could be denied entry on the basis of a single inspector's suspicion that the permanent resident has somehow relinquished status or is otherwise no longer eligible to return to the United States. Similarly, persons carrying a valid visa of any sort can be barred from the United States at the whim of the inspecting officer. The potential for harm is apparent: persons with every equity for returning -- a home, U.S. family, future citizenship -- can be kept out by a single INS officer, without any protections against error or capriciousness.

We fear that, without a safeguard against wrongful determinations, preinspection casts its procedural net too widely. We hear reports from our members about incidents of mistake or error by preinspection officers and the consequential hardship in Canada and elsewhere where preinspection stations already exist. We are not convinced that it is necessary or desirable to empower low level immigration officers to deny entry to any person seeking to enter the United States no matter how facially valid his or her documents. There are complex eligibility rules that operate to prevent the ineligible from entering the country, and those rules and the existing process are effective insulation against the ineligible slipping by.

Returning permanent residents and other admissible aliens have important legal mechanisms for proving their eligibility to enter that will not be available at a preinspection station, such as an opportunity for deferred inspection, where he or she may arrive physically and be inspected for lawful admission later, or the possibility of a prompt exclusion hearing where he or she can prove admissibility. That is why we approve of the language in last year's bill that would have required INS to parole in lawful permanent residents where there

might be any question about their entitlement to return. This type of safeguard makes sure that a lawful permanent resident will not be stranded abroad, away from family, friends, and resources — questions regarding his or her status resolved expeditiously, but without the undue hardship to the alien and without the distance from the sources of information necessary to assessing an alien's status.

For these same reasons, we would add to the protections of last year's bill a provision that would afford any person with valid documents the opportunity to establish his or her eligibility through the mechanisms that exist stateside. A reuniting family member, a crucial businessperson, or other authorized alien should not be unequivocally barred from entering the United States just because an inspecting officer decides to play a hunch or makes a mistake and incorrectly believes that a person does not have valid entry documents.

The purpose of the preinspection program is to expedite the movement of travellers. Without certain safeguards like parole, the program could have the opposite result and stop legitimate people from coming in. We encourage a parole provision or other safeguard for permanent residents, immigrants, and nonimmigrants be included in the bill.

*c. The number of persons needing special attention are relatively small.*

We know that, far and away, most people will not encounter any problems in the preinspection process, and there will only be a small contingent that will require additional attention. How small that contingent is is somewhat surprising.

According to the INS Statistical Yearbook, the overwhelming number of aliens who fail to gain admission are those who withdraw their applications during the inspection process. Large numbers withdraw their applications during primary inspection (e.g. 287,000 in FY91), even more withdraw during secondary inspection (695,000 in FY91). Thus, in 1991, for example, only 2% of the cases that were ever inspected required review by an immigration judge, and six out of seven of these applicants were granted admission.

The numbers are more clearly *de minimis* when looked at specifically. Our recollection, the three contemplated sites for the first preinspection stations would be London, Frankfurt, and Tokyo. In 1991, the number of aliens excluded from entry from the *all airports* in the United Kingdom, Germany, and Japan were 86, 44, and 6 respectively. Relatively speaking, there is nominal, if any, administrative burden in paroling these few people in for an exclusion hearing or other attention.

For this reason, the benefits of the preinspection would not be compromised by the inclusion of certain safeguards that were built into last year's approved preinspection

legislation. Presumably, preinspection will "scare off" a significant percentage of persons who are not entitled to enter the United States and the extra effort it would take to acquire access to an immigration judge still more. If anything, preinspection may naturally distill the group of persons seeking review to a very small handful whose persistence may very well indicate *de facto* a case worthy of review.

*d. Monitoring of the preinspection sites should be built into the program.*

Conceptually, preinspection is a sound concept, but like any new or developing program, it could benefit from built-in opportunities for monitoring and evaluation.

We recommend two amendments to the existing bill be made. One, an independent evaluation and congressional review of existing sites should take place before new stations can be established. In this way, Congress could be certain that preinspection is operating as planned, before expanding it further. Congress could in this way also ensure that weaknesses in the existing system or at an existing site would be identified and addressed before transplantation at a new location.

Two, we would urge Congress to permit nongovernmental monitoring or similar access to established preinspection stations. In this way, Congress could have more assurance that preinspection's refugee and other protections are in place and operating. Such a safeguard will help assuage any public reservations about the preinspection program, offer it constructive criticism to better develop it, and do so at no expense to the government.

*e. Congress should continue to investigate the fiscal and international implications of preinspection.*

There are two technical considerations about preinspection that we trust the Congress, in consultation with the Executive Branch, will consider before enacting it into law.

First, we understand from last year's governmental testimony that there is some concern about the cost of setting up additional preinspection stations. Beyond a general deserve for cost-effective programs, we are concerned that monies that go to preinspection not be drawn from other important services, such as adjudications backlogs, that are already in desperate need of funds. It is our hope that Congress will provide thoughtful guidance on whence funding should derive.



Second, we encourage the Subcommittee to explore further any potential international implications that stem from setting up preinspection abroad. For example, it is unclear whether, by placing U.S. immigration/law enforcement officers in foreign airports, we must allow other nations reciprocal preinspection rights on our shores. While we do not have any opposition based on this topic, we do raise it out of general concern.

## H.R. 1679 -- ASYLUM REFORM ACT OF 1993

We commend Chairman Mazzoli for his interest in streamlining the asylum process. We share the Chairman's deep concern that asylum adjudications be promptly conducted and that a refugee's claim for asylum be timely heard and decided.

The Asylum Reform Act of 1993 looks to resolve the general "administration" problems of the regular asylum program by redefining the basic structure of the asylum program and imposing rigid procedural deadlines. This legislation would require all persons seeking asylum in the United States to first obtain (and maintain for a year) *nonrefoulement* status, which would require the alien to (a) make a timely application and (b) establish a likelihood of persecution if returned to his or her country (the burden of proof standard is significantly higher than current law's "well-founded fear of persecution"). *Nonrefoulement* status would come with privileges similar to asylum, such as work authorization.

The legislation would require a notice of intent to apply for *nonrefoulement* to be filed within 7 days from entry or arrival, and an actual application filed with 30 days thereafter. A hearing on the application must be held within 45 days of its filing, with a decision within 30 days of the hearing.

The *nonrefoulement* program would utilize specially trained *nonrefoulement* officers, who act in a quasi-immigration judge role as arbiter of a *nonrefoulement* application, receiving testimony and evidence from both the alien and the trial attorney. The determination of the *nonrefoulement* officer on the application is not administratively reviewable, although a separate subsequent proceeding would be required before an immigration judge to make a formal finding and order of deportation. Judicial review is available on both denials and grants of status. If cases are already in removal proceedings, a *nonrefoulement* decision will be expedited on the case.

*1. The legislation takes asylum reform in the right direction, but we would recommend that the Executive Branch be given an opportunity to reform the current system consistent with this goal.*

The Chairman's bill gets at the heart of both the "airport" and "administration" problems in the asylum program -- how do we accelerate asylum determinations, how do we achieve prompt adjudications. There are meritorious aspects about this bill that should be explored in any reform package.

However, with all respect to the Chairman, we would like to see the new Administration given a chance to reform the existing asylum program, perhaps under a

congressionally suggested deadline, with the same objectives as those framing this proposal. As already discussed, there are several reasons for permitting the Justice Department to move forward with administrative changes before legislating reform, from the emerging spirit of cooperation between INS and the nongovernmental community to the mix of fresh and experienced leadership that is coming into place at INS and the Justice Department.

Perhaps the most significant reason to explore administrative reform first is that both the agency and the public are still working at reducing theory to practice. The current asylum program is still in its infancy, and the concepts behind the Refugee Act of 1980, as embodied in the regulations in 1990 and thereafter, have been tested for little more than one year. We fear that it would be counterproductive to introduce another round of legislative reform and administrative response before this one has been given a chance. It takes time to work out the bugs out of a new system, and we would like to see the current system, which we are in concept enthusiastic about, given a full opportunity to change and improve.

We would respectfully ask that Attorney General Reno and the Justice Department be given more time to resolve the problems in the existing administration of the asylum program. For this reason, we believe that the statutory changes contemplated by this bill should be deferred until the Administration has had a genuine opportunity to resolve the underlying concerns administratively. If, at a later date, the Subcommittee feels that administrative reform is not progressing quickly enough, we should revisit this proposal at that time.

*2. The bill is properly concerned with keeping the determinations process moving, but inflexible deadlines could result in arbitrary denials.*

Again, we concur with the Chairman's efforts to accelerate the asylum application process. As already discussed, the problems in administration that exist now are due in large part to the lethargic pace of adjudications. However, we strongly fear that the fixed application cut-off deadlines contemplated in the bill are too rigid for many legitimate asylum-seekers to make persuasive claims for asylum and, though well intended, could invite needless and arbitrary denials of legitimate asylum applications. We urge care not to confuse rigid cut-off dates with prompt adjudications.

As the Chairman well appreciates, there is always a risk in fixing cut-off deadlines in statute. We very much need to have prompt adjudications, and yet we do not want to be draconian in our time restrictions. Our main concern with procedural deadlines should not be simply how quickly we can get a case decided; our focus should be on how can quickly can we discover the frivolous cases without putting legitimate refugees at risk. While we

want a system that is efficient, it must also be fair and accurate. We must be careful not to put procedures before the merits.

If the administration of the asylum program is efficient, decisions regarding how many days to file, to review, etc. need not be decided statutorily. While it may later prove necessary to legislate the administration of the asylum program, we believe we have not yet reached that stage. There is at present no need to risk returning someone to persecution for the sake of well-intended, but potentially arbitrary cut-off deadlines. We recommend that Congress not set such procedural guidelines at this time.

*3. The higher standard of proof risks more denials, but without any real improvements in administration.*

While we are receptive to many aspects of this bill, we are troubled by the change in the standard of proof. We very strongly fear that raising the standard invites more denials, without really offering any improvement in the administration of the asylum program.

The Refugee Act of 1980 and subsequent court precedent have fleshed out our nation's international and humanitarian obligations. The standard of proof for asylum, the "well-founded fear of persecution," is an international standard that we have incorporated by reference and that the Supreme Court has ruled on in the landmark case, *INS v. Cardoza-Fonseca*. It is a subjective standard that recognizes the realities of refugee flight and the inherent difficulty in presenting evidence in an asylum case. In contrast, the probability standard has been expressly rejected here and abroad as too demanding to be humane in asylum cases. The standard is too high, and risks returning legitimate refugees to the persecution they flee.

We are puzzled by the change in standard. The "airport" problem is not related to the refugee standard -- the problem at JFK is not that too many people qualify for asylum, but that too many people are applying for asylum who do not qualify. The "administration" problems are similarly not rooted in the refugee standard. They deal with the need for more prompt adjudications, and the higher standard does nothing to accelerate the adjudications process. In fact, all it will do is result in more denials, without having any meaningful impact on the operation of the asylum program.

There has been no study of which we are aware that criticizes the standard of proof, and we observe no problems with it. In comparison, the well-founded fear of persecution standard is familiar, well-received, and consistent with our international and humanitarian obligations. Without any correlation with improved asylum processing, we cannot endorse

such a change, and therefore urge that this provision not be adopted in any reform legislation.

*4. It is not necessary or efficient to eliminate administrative review.*

The legislation proposes to remove administrative review from the asylum program. While the attempt at streamlining is appropriate, this may not be a necessary or effective. The real problem with administrative review is not the additional layer of administrative safeguards, but the delay and failure of the review bodies -- the immigration judges and the BIA -- to be an integral component of case management. Moreover, in seeking administrative economy, the proposal could increase the workload of the federal courts.

There may be some efficiency in streamlining the functions of an Asylum Officer and an immigration judge, but the assumption that administrative review is wasteful is erroneous. Contrary to appearances, the presence of administrative safeguards does not retard the adjudications process. It is the compounded delay that results from lethargic adjudication. If immigration judges and the BIA were more prompt, the entire system would work dramatically better. In fact, since the BIA can and does summarily deny frivolous appeals, it already has the power to accelerate the adjudications process by acting on the easy cases that lie dormant for months and years before it. Administrative bodies of review that are timely and integrated into an entire program of prompt adjudication are in some ways the most valuable tool available for combatting frivolous cases.

Moreover, by eliminating the layer of administrative review, this proposal will have the effect of "pushing" cases that could have been resolved by the BIA into the federal courts. As a strategy, the burden is shifted from immigration to federal courts, but the overall savings is questionable.

We are in agreement that we need an asylum system that is prompt, accurate, and efficient. If administrative review is properly executed and integrated, accurate and efficient will come on the heels of prompt.



**H.R. 1355: EXCLUSION AND ASYLUM REFORM AMENDMENTS OF 1993**

While we share with Congressman McCollum an interest in reaching final determinations on asylum claims more quickly, we cannot accept his summary exclusion proposal as the answer.

We agree with the respected Congressman that the asylum process takes too long, but this legislation would strip not redundant protections, but all protections. We oppose the concept of summary exclusion because it emphasizes reduced process at the expense of legitimate refugees. Summary exclusion has the right idea -- the expedited removal of frivolous claims from the asylum system and the prompt adjudication of all others -- but too greatly risks returning refugees to persecution.

*1. Summary exclusion does not recognize the realities of refugee flight.*

Under the proposed legislation, an asylum-seeker would be ineligible to even apply for asylum if he/she does not possess the proper documentation for admission to the United States. Unless the asylum-seeker can convince a front-line immigration inspector that he/she had to resort to misdocumentation to escape persecution or to depart a country where he/she faces a significant danger of being returned to persecution, the asylum-seeker will be summarily excluded. The asylum-seeker will apparently need to do this *on the spot*, without evidence, corroboration, a translator, counsel, or perhaps even rest from the international flight.

This summary exclusion proposal belies the reality that persons often must rely on irregular or improper documentation to escape persecution and make their way to freedom. Persons seeking asylum at the airport rarely carry properly issued passports or visas. This is the very nature of one fleeing persecution; people fleeing for their lives cannot get appropriate travel documents from their persecutors. By denying these asylum-seekers an opportunity for a hearing on their claims, summary exclusion in effect penalizes them for relying on improper documentation to escape. This legislation undermines asylum in the United States by creating an inspection system that is hostile to claims for asylum.

*2. By barring any administrative or judicial review, H.R. 1355 strips away all protections against a wrongful determination and greatly risks returning refugees to countries of persecution.*

The summary exclusion bill appears to reduce all asylum claims to a single interview before a lone, low-level inspecting immigration officer. There are no guarantees that a legitimate asylum-seeker will have a genuine opportunity to make a claim, present evidence, or seek the assistance of counsel. There is no application, no appeal, no hearing and no review. No one -- not the courts, the Attorney General, or even the inspector's supervisor -- can change that determination. Without any opportunity for review, there is absolutely no protection against an erroneous or capricious denial. (Although, curiously, there are safeguards against an erroneous or capricious approval.)

These are not the conditions under which a potential life and death determination should be made. The reason for administrative and judicial review in any setting is to guard against mistakes and misconduct by the adjudicator. The fact that asylum cases do occasionally make it to the federal courts is evidence that the system does not recognize every legitimate refugee at first blush or even the second. Our nation's international obligations and historic commitment to protecting the persecuted is not served by reducing asylum adjudications to a lone arbiter's "thumbs up or thumbs down." There must be some mechanism for review in any procedure that could affect the safety of an asylum-seeker.

In addition to the real opportunity for error, there is also the all-too-real possibility that summary exclusion will be abused by the inspectors who wield that discretion. Summary exclusion gives lower level officers the absolute power to stop refugees at the airport, label them "frauds," and exclude them. There are no safeguards against wrongful conduct -- no hearing, no appeal, no review. Only in the context of summary exclusion are inspectors answerable to no one and the decision to exclude unreviewable, no matter how capricious or arbitrary.

The risk of returning a legitimate refugee to persecution or death is too great to be left to an immigration officer based on a single interview conducted immediately upon arrival.

### *3. Judicial review is a necessary to protect against life-threatening agency error.*

Besides the fact that it would probably not survive constitutional scrutiny, the additional bar on judicial review removes the only recourse outside government bureaucracy for a legitimate asylum-seeker to make a case. Yet, in contrast, there is also real judicial savings in keeping asylum cases out the federal courts because, as a practical matter, very few cases are strong enough to get there. The few that do are almost always those that deserve the review, and a significant number win. We must be mindful that applicants who succeed at the appellate level are *refugees*, every bit as genuine and legitimate as those who

are granted asylum administratively. The only difference is that, under summary exclusion, they never get recognized.

***4. Expedited examinations and removal should be directed at frivolous claims for asylum, based on the merits of the case.***

We concur with the basic purpose behind summary exclusion: the removal of ineligible applicants from the asylum system as quickly as possible. As advocates for asylum-seekers, we appreciate that it is in everyone's interest -- the public, the government, and the genuine asylum-seeker -- to have a procedure that will discourage frivolous asylum applicants without denying hearings or risking the exclusion of bona fide refugees.

As already discussed, the solutions exist administratively. However, if this Subcommittee believes that a legislative solution is necessary, then these goals can be served with less drastic measures than contemplated in this legislation. We would advocate a program in which an airport arrival with improper documentation requesting asylum is promptly referred to a "Senior Asylum Officer" or SAO to decide if it is a frivolous claim. If the SAO finds the claim is frivolous, the applicant is summarily excluded. It would then follow that if the applicant sought review by an "asylum immigration judge" or AIJ. The AIJ would conduct an accelerated review on the frivolousness determination and confirm the final exclusion order if appropriate.

Any statutory solution to the "airport" problem should quickly remove the aliens from the system who *cannot* be refugees and present *no* threat to legitimate seekers of asylum.

***5. Release from detention should be available in low risk cases.***

The legislation as introduced requires the Attorney General to detain every person who is neither obviously approvable nor summarily excluded. Given the current availability of detention space, we would have to question the physical plausibility of such a requirement or the fiscal responsibility of making it plausible. More importantly, mandatory detention for every case is neither necessary, nor efficient, nor humane. An adequate release and monitoring program would serve the dual purpose of reducing detention costs by releasing persons whose detention is not necessary and increasing control through more frequent contact and supervision.

INS management of detention is a thorny problem even *without* expanding it. There is a demonstrated limitation in detention space, and what space there is costly to maintain and not managed very well. Detention decisions, as the GAO has pointed out, are based

on geographical location, local practices, and the nationality of the detainee. While INS has attempted to set priorities on who should be detained, INS regional offices still fail to differentiate adequately between cases that do require detention (i.e. high risk cases that involve a threat to the public and/or pose a high likelihood of absconding) and those that do not (e.g. facially legitimate asylum applicants). Unlike the criminal justice system, INS does not track or exercise any control over released detainees. Rather, it releases them unconditionally and unmonitored, providing none of the mechanisms that other "penal" systems employ to facilitate compliance with the terms of release. Where there is no contact with the alien for months or even years, the system is doomed, if not calculated, to fail.

Rather than rely on indiscriminate detention to deter illegal immigration, it would be more cost-effective, better protect the public, and be more fair toward genuine asylum-seekers to develop a parole-like system that would permit the timely release of eligible aliens (i.e. pose no threat to public safety and are unlikely to abscond) on bond, with supervision, regular contact, and set terms of release. There are several models in federal and state criminal justice systems from which to choose. Moreover, there are cost-effective ways of providing the necessary supervision, such as through the involvement of voluntary agencies that are willing to supply the support and monitoring that INS is unable to. In fact, INS is experimenting with a release program now, utilizing asylum pre-screening officers (APSOs) in certain airport locations, to determine if an asylum-seeker has a credible fear of persecution.

The APSO program is precisely the type of solution that Congress should support -- maximum deterrence with minimum detention. If a program were established that would expeditiously release low risk cases from detention, space would be freed up to detain the high risk cases and thereby discourage illegal immigration and spiraling detention costs. It would also treat more equitably persons, like legitimate asylum-seekers, who do not require detention. Thus, rather than require increased and expensive detention, Congress should direct INS to establish an adequate parole-like program that would substantially reduce the need for detention without losing any of the deterrent of detention.

## CONCLUSION

The American Immigration Lawyers Association again commends the Chairman and the Subcommittee for its commitment to improving the asylum program and appreciates this opportunity to express its views.

APPENDIX

AN ASSESSMENT OF THE CURRENT ASYLUM SYSTEM

AN INTERIM ASSESSMENT OF THE  
ASYLUM PROCESS OF THE  
IMMIGRATION AND NATURALIZATION SERVICE

December 1992

National Asylum Study Project

A Project of the Harvard Law School  
Immigration and Refugee Program  
Program on the Legal Profession



## EXECUTIVE SUMMARY

The Immigration and Naturalization Service ("INS") published final revised asylum regulations, effective October 1, 1990, significantly modifying INS' previous process of adjudicating asylum cases. After approximately two years under the new regulations, the National Asylum Study Project is issuing the first systematic study of the new asylum process, analyzing both the administrative aspects of the program and the quality of the asylum officer corps.

### Prior Asylum Process

INS asylum decisions under interim regulations prior to 1990 received widespread criticism from governmental and non-governmental agencies for doing little more than adopting the recommendation of the Department of State, regardless of the merits of the case. For example, the General Accounting Office found that INS examiners followed the recommendations of the Department of State more than 95% of the time. Applicants from countries considered "hostile" to the United States, such as the former Soviet Union, the People's Republic of China and Iran, were granted at a rate greater than 50%. By comparison, applicants from countries considered "friendly" to the United States, such as Guatemala and El Salvador, were granted at a rate less than 3%, regardless of the strength of the case. The asylum approval rate for applicants who said they were arrested, were imprisoned, had their lives threatened or were tortured was estimated at 3% for Salvadorans compared with 55% for Poles and 64% for Iranians, according to a governmental report in 1988.

Two major class actions encompassing hundreds of thousands of asylum seekers raised claims of bias and improper foreign policy influences in the prior asylum process: American Baptist Churches v. Thornburgh, a nationwide class of hundreds of thousands of Salvadoran and Guatemalan asylum seekers, and Mendez v. Thornburgh, a class of asylum seekers of all nationalities in the Los Angeles area. These cases were resolved favorably to the asylum applicants, allowing new asylum interviews by the new corps of asylum officers established in the 1990 rules.

### Creation of the Asylum Officer Corps

When the government published the new asylum rules in 1990, it highlighted its intent to create an asylum adjudication branch separate from INS enforcement branches, employing a new corps of asylum officers under national supervision outside the usual structure of local INS district offices to improve the quality and consistency of decision-making. This led to the opening of seven new asylum offices in Arlington, Chicago, Houston, Los Angeles, Miami, Newark and San Francisco in April 1991. INS also initiated a four-week training program for asylum officers and developed training materials on asylum practice, refugee law, and interviewing techniques.

The regulations also established a documentation center to disseminate to asylum officers credible human rights materials from governmental and non-governmental sources, thereby limiting exclusive reliance on Department of State materials that often reflected United States foreign policy concerns.

#### Overall Improvement in Asylum Interviews

Study Project interviews of 290 attorneys and legal workers with experience in each asylum region found that in general the quality of asylum officer interviews has improved in comparison to interviews under the prior system. On the whole, asylum officers appear more knowledgeable about asylum law, more polite, and if not in every case more knowledgeable about country conditions, at least more willing to listen than the previous INS examiners.

The quality of the officers varies widely, however. At least two asylum officers in each of the seven asylum offices demonstrated unusual sensitivity, compassion and an understanding of asylum law (approximately 17% of the first group of 82 asylum officers). By contrast, at least one asylum officer in each region (approximately 8.5% of the original 82) exhibit the hostility and lack of interest associated with the previous process.

This substantial variation has led practitioners in each of the seven asylum regions to praise the overall improvement in the quality of the interviews, but to feel that the outcome of the case depends on which asylum officer handles it. In a representative comment, one practitioner said: "It's like Russian roulette."

The asylum officers exhibit varying knowledge of country conditions as well. Some appear more knowledgeable and others do not appear to know basic information, such as the meaning of "pogroms" against Jews, or the location of Guatemala or Sri Lanka. Others have knowledge of one nationality but not another, while others who do not know the country conditions in every case let the applicant educate them.

#### Noticeable Changes in Decisions

The asylum officers issued too few decisions during the last year to draw final conclusions about the quality of the decision-making. They issued 10,923 decisions in fiscal year 1992, leaving a backlog of 215,772 asylum cases as of October 1, 1992. They approved 4,019 cases and denied 6,904, for an overall approval rate of 36.8%. Under the prior system, the cumulative approval rate was 23.6% (from June 1983 to March 1991), with 41,227 cases granted and 133,178 cases denied. When the asylum officers started in April 1991 there were already 114,044 cases pending from the previous system.

There appear to be some noticeable changes in approval rates for applicants of certain nationalities, such as Salvadorans, Guatemalans and Haitians, who won asylum under the prior system less than 3% of the time and whose decisions were viewed as influenced by foreign policy considerations. The recent approval rate under the new process for Salvadorans was

28%, Guatemalans 21%, and Haitians 31%, according to official INS statistics for fiscal year 1992.

### Troubling Signs in Decision-Making

There are some troubling signs in the quality of decision-making, however. These include lack of legal reasoning, incorrect understanding of the fundamentals of asylum law, misstatements of central facts in the claim (such as the country of origin), and incorrect burdens of proof (such as requiring that an applicant be "singled out for persecution," a standard that the regulations specifically reject). The INS has taken several steps recently to improve the quality of decision-making, including the creation of temporary quality assurance teams in each asylum office and an increase in the number of supervisors in every asylum office except the two smallest -- Chicago and Houston.

Based on a preliminary review of decision-making, there also are indications that foreign policy issues unrelated to the merits of a claim may still be influencing the outcome. Some asylum officers, in denying cases, are relying on Department of State reports to contradict or override other credible objective sources and lengthy documentation submitted in support of the application. As one practitioner explained in a representative comment: "Some asylum officers let the State Department trump all other sources."

### Special Treatment of Haitian Asylum Applicants

Haitian Asylum Cases in the United States. Haitian cases, in particular, may be subject to special foreign policy pressures. These are the asylum cases of Haitians who fled from Haiti after the military coup in September 1991, whom the Coast Guard interdicted on the high seas and INS screened into the United States after an interview at the United States military base at Guantanamo Bay. INS screened-in 10,319 Haitians in 36,596 interviews, according to official INS statistics, for an average screen-in rate of 28%. INS allowed the people screened-in to enter the United States to apply for asylum (except those who tested positive for H.I.V.), and repatriated to Haiti those INS screened-out.

Preliminary examples of special treatment of these Haitian asylum seekers in the United States include:

- **Expedited Scheduling.** INS set an expedited interview schedule for Haitian cases in Miami, even though INS deferred until at least 1993 the scheduling of clearly non-frivolous cases from other countries. Haitian cases would be clearly non-frivolous under INS' own terms since INS screened all these applicants into the United States at Guantanamo Bay after finding that they had a credible fear of persecution;
- **Special Scrutiny.** The Asylum Policy and Review Unit of the Department of Justice subjected the asylum officers' assessment of Haitian cases to added scrutiny, and recommended reversing over half (18 out of 33) of the asylum officers' initial

recommendations to grant asylum;

- **INS Prejudgment of Cases.** A high ranking INS official made public statements that 90% of these Haitian cases would be denied even though at the time of his statements asylum officers had interviewed very few Haitian applicants;
- **Over-reliance on Department of State.** Notices of intent to deny cite Department of State information that directly contradicts numerous other credible and more recent sources that would support a grant of asylum;
- **Compromise of Confidentiality.** A major voluntary agency involved in resettling Haitians asserted that United States embassy officials in Haiti specifically went to the home of relatives of Haitians seeking asylum in the United States to investigate the asylum case, misrepresenting their authority to question the relatives. Such visits bring danger to family members and do not escape notice from the authorities (section chiefs) in the local community. They also compromise the confidentiality of the application, which the regulations require.

If final results correspond to these preliminary results, it will show that foreign policy considerations and political pressures are still able to influence asylum claims despite the creation of an asylum officer corps that is better-trained, more independent and more knowledgeable than previously.

**Screening at Guantanamo Bay.** The exodus from Haiti created the most serious refugee crisis of the past year in this hemisphere. The government responded by conducting screening interviews outside the United States for Haitians. It detailed the INS asylum officers to Guantanamo Bay from November 1991 to June 1992, when anywhere from 20-50% of the asylum officer corps was at Guantanamo Bay. President Bush's May 1992 executive order ended the screening of Haitians and began a program of repatriating to Haiti those interdicted at sea regardless of their danger upon return. The legality of that order is currently pending before the United States Supreme Court.

The quality of INS' screening of Haitian asylum-seekers varied with some officers exhibiting a knowledge of conditions in Haiti and an attentive and sympathetic attitude, and others displaying a lack of interest or hostility. It was, however, significantly better than INS' previous screening of Haitians interdicted by the Coast Guard at sea. Interviews at Guantanamo Bay tended to be longer, occurred in greater privacy, and were subject to quality control review. In almost ten years of Coast Guard cutter screening prior to the September 1991 coup, INS interviewed over 24,000 Haitians interdicted by the Coast Guard in brief ship board interviews and brought only 28 to the United States to seek political asylum.

The "screen-in" rate at Guantanamo Bay fluctuated widely, however. In mid-January it was 85%, although the average was 28%. During one period in early April 1992 it dropped to a low of 2% after a Department of State report on conditions in Haiti was circulated to the



asylum officers and supervisors. These fluctuations leave the impression of inconsistent standards resulting in inaccurate or unfair results.

#### Resource Information Center

The Resource Information Center had a slow start due to limited funding and delays associated with agency review of its materials prior to dissemination. Although it hired excellent caliber personnel, the limited staffing and funding has been inadequate for the work. It recently accomplished several projects, however, that are central to asylum adjudication. In the summer of 1992, it completed a computer data base containing the INS asylum law manual and all of the country conditions information on 20 refugee producing countries from Canada's Immigration and Refugee Board Documentation Centre. In the Fall of 1992, the Resource Information Center began distributing to the regional asylum offices Master Exhibits, which are compilations of documents on specific issues or geographic areas of a refugee producing country, prepared by non-governmental organizations or individuals. It also distributed to each asylum office publications of credible non-governmental human rights monitoring organizations.

#### Fewer New Cases Than Anticipated

Despite the high number of cases in the backlog, INS is not facing an asylum crisis in new case filings. There were fewer new cases filed in fiscal year 1992 than INS anticipated. The asylum offices received a total of 103,447 asylum applications. Approximately 50,000 cases were due to the ABC Settlement Agreement, leaving approximately 53,000 non-ABC cases, significantly less than INS' projection of 80,000 new cases.

Applicants from 25 countries of origin comprised 92% of the cases filed in fiscal year 1992, with the top ten countries, generally considered to be refugee-producing, constituting 78% of filings. The top two were Guatemala with 43,834 and El Salvador with 6,730 cases, due primarily to the ABC Settlement Agreement. By contrast, applicants from countries INS identified as presumptively frivolous generated less than 1% of total filings, with, for example, 3 from Australia, 10 from Canada, and 2 from New Zealand.

#### Inappropriate Case Quotas

INS has set a case completion goal of three hours per case that may undermine the improvement in interviews and the efforts to improve the quality of decisions. INS officials in several asylum regions expressed concern that meeting these productivity goals will sacrifice quality adjudication. Preliminary results show that the pressure to increase productivity is affecting the interviews of applicants, resulting in greater impatience of asylum officers at the interview and more superficial questioning of applicants. The pressure of the work load goals may also exacerbate problems with decision-making, resulting in superficial case review and analysis of the law and country conditions. INS' allotment of 45 minutes for an asylum interview appears particularly inadequate. Using an interpreter reduces approximately by half the time an asylum officer spends questioning the applicant, leaving approximately 22 minutes,



about half of which is spent on the introduction, biographic information, and an explanation of the asylum process.

### **Widespread Administrative Problems**

While the asylum officers are on the whole better trained and more knowledgeable and open than the previous INS examiners, the administration of the program encountered substantial problems. The creation of new asylum offices occurred without adequate staffing and attention to operational issues. INS has recently undertaken measures to alleviate some of these concerns, including the hiring of additional clerical staff. Widespread administrative problems that left a general sense of frustration in most of the asylum regions during the last year included:

- Long delays in adjudicating cases, some of which were several years old;
- Lost files. In Los Angeles, during Study Project observation in the summer of 1992, on more than half of the days observed at least one asylum file for an applicant arriving for an interview was lost and on several days two to five files were lost. One Los Angeles attorney said that in eight of his ten interviews, the file had been lost;
- Incomplete files with some but not all of the information submitted in the file. Some asylum offices admitted this and specifically told attorneys that they should bring to the interview any additional materials filed in the case after the application;
- Lack of response to letters of inquiry from applicants and attorneys, and refusal to answer inquiries over the telephone;
- Lack of notice of interview, with notices arriving within less than the three week period set by INS;
- Failure to adjudicate work authorization requests in a timely manner.

Shifting and Complex Processes. INS' shifting and perhaps needlessly complex procedural requirements also hampered administration. For example, in the summer of 1992, without notice INS began to require the use of new asylum forms and returned the old ones for refiling. The new forms were generally unavailable even when requested from asylum offices. INS then rescinded the order requiring the new forms, saying it would publish a notice in the future requiring them, yet INS offices erroneously continued to return applications filed on the old forms.

INS' varying plans for scheduling a mixture of new and old cases for interviews have been ineffective. The plans depended on the INS computer automatically scheduling a certain percentage of old and new cases for interview. The computer data base, however, did not contain 170,000 cases (at the end of December 1991), hence almost none of these cases were scheduled for interview. Many of them involved applicants who had already been waiting

several years. The entry of these cases into the computer data base was not complete nationwide until the following October 1992, a year and a half into the new asylum program.

**Inadequate Staffing.** Although the number of asylum officers almost doubled by April 1992 (going from 82 to 150), the number of clerical positions remained the same. The approximately 20 new clerical staff authorized to accompany the new asylum officers remained unfilled until the end of September 1992. Thus, for six months the same number of clerks worked at offices some of which had almost tripled in asylum officers. San Francisco, for example, expanded from 8 asylum officer positions to 16, Newark expanded from 8 to 23, and Arlington expanded from 9 to 22, all without new clerks.

**Inadequate Office Space.** Other long-standing problems are still unresolved, such as an interviewing location in Los Angeles for the Los Angeles asylum office. The Los Angeles office is located in Anaheim, 30 miles from Los Angeles and a two-hour or longer bus ride. Los Angeles is by far the busiest asylum office with over 90,000 cases, almost half the total of over 215,000 pending cases. Representatives of applicants have requested that INS maintain a permanent interviewing location in Los Angeles to make the busiest asylum office accessible to applicants.

### **Work Authorization**

Issuance of work authorization, which INS must grant to asylum applicants with non-frivolous claims, encountered serious difficulties in the first year of the asylum program. Because most asylum offices did not act in a timely fashion, applicants were entitled automatically to interim work authorization issued by the INS district offices. Problems surfaced in the working relationship between some of the new asylum offices and the INS district offices concerning work authorization, where asylum office officials did not appear to have authority to correct mistakes the district offices were making and the district offices were burdened with extra work from the asylum offices' failure to adjudicate work authorization in a timely fashion.

INS initial response to work authorization problems and the shortage of clerical staff was to parcel out a portion of the work to another INS branch. In May 1992 INS announced a new policy of using the INS Regional Service Centers to open case files and adjudicate work authorization. This plan, while expediting processing for the most part, has created new problems, such as erroneous denials of work authorization, erroneous classification of cases for expedited processing, incorrect return of applications, and a complicated filing process requiring another address and location.

### **Issuance of Orders to Show Cause**

A subsequent modification of the 1990 asylum rules has already tempered the asylum officers' separation from enforcement functions. Supervisors of asylum offices now issue documents to begin deportation or exclusion proceedings against asylum applicants whose cases they deny, or who fail to appear at their asylum interviews. Asylum officials in several regions

expressed concern over having asylum officers prepare these documents for issuance due to the substantial amount of time necessary to prepare the document and the difficulty in investigating the applicant's legal status and rights to other remedies, for which an asylum officer would need a broad background in immigration law which many lack.

### Teleconferencing Interviews

INS experimented with teleconferencing technology for asylum interviews rather than traveling to circuit riding sites for in-person interviews. The technology does not appear suitable for asylum interviews due to the limitations of the technology (in the poor quality picture and the lag time between the audio and the video), and the significance of credibility in assessing an asylum claim.

### National Asylum Study Project

The National Asylum Study Project was established in November 1991 to conduct a comprehensive study of the recently-implemented asylum adjudication process of the Immigration and Naturalization Service ("INS"). The new process supplanted INS' prior system that had been widely criticized for serious problems in the quality and consistency of decision-making, the influence of foreign policy considerations, the knowledge and training of asylum examiners, and their sensitivity to asylum applicants. The INS' stated goal of the 1990 asylum regulations was for a fair legal process faithful to the humanitarian purposes of the Refugee Act of 1980, yielding consistent and reasoned decisions, while preserving the applicant's right to refile for asylum with the Immigration Court where more formal due process protections apply.

The principal goal of the Study Project is to collect comprehensive data on the new asylum process nationwide to assist non-governmental organizations, policy makers, elected officials, and the INS in assessing it. The Ford Foundation funded the Study Project in a grant to the Harvard Law School.

This report was written by Sarah Ignatius, the Study Coordinator, and edited by Deborah Anker, the Research Director. The National Asylum Study Project is located at the offices of Cambridge and Somerville Legal Services, 432 Columbia Street, Suite 16, Cambridge, MA 02141 (617) 494-1800, FAX (617) 494-8222.

## METHODOLOGY

Scope. The goal of the interim report is to provide a preliminary analysis of the INS' new asylum adjudication process and to suggest areas for improvement. Data collected between November 1991 and October 1992 form the basis of this interim report, including an inquiry into the following areas:

- the administrative framework of the new asylum process;
- the composition, training, and supervision of the asylum officer corps;
- the quality of asylum officer interviews;
- the number of cases pending and decisions issued;
- the regional variations in procedural matters;
- the functioning of the Resource Information Center

Research Instruments. Study Project researchers used four standard data collection instruments: (1) the case questionnaire for attorneys; (2) the exit interview questionnaire for asylum applicants; (3) the screening questionnaire for Haitians screened into the United States at Guantanamo Bay; and (4) the interpreter questionnaire for people serving as interpreters at Guantanamo Bay. Generally accepted research standards guided the work pursuant to a methodology designed in consultation with a panel of four social scientists and with the advice of a statistician.

Observation of Interviews and Unrepresented Applicants. INS refused to give Study Project researchers access to observe a specified number of interviews of asylum applicants selected at random. Study Project researchers developed an alternate methodology for observation of interviews and for collection of data on unrepresented asylum seekers. That methodology included observation of interviews on a more selected basis, exit interviews with applicants, and interviews with attorneys, legal workers, and immigration consultants who have encountered unrepresented asylum applicants. Study Project researchers hope that INS will provide access to interviews prior to the Study Project's final report.

Components. The following data and observations form the primary basis of the interim report:

- 359 interviews of attorneys, immigration officials and applicants, as follows:
  - 290 attorneys, legal workers and immigration consultants representing applicants

from 56 countries<sup>1</sup> and with experience at all seven asylum regions<sup>2</sup>;

- the five key INS officials responsible for national supervision and operation of the asylum program;<sup>3</sup>
  - each of the seven directors of the regional asylum offices and site visits to each office;
  - 33 Haitians screened into the United States from Guantanamo Bay and 13 people who served as interpreters at Guantanamo Bay screening interviews;
  - asylum officers at each regional asylum office and employees at the INS Resource Information Center.
- 239 Study Project questionnaires regarding individual cases;
  - review of or discussion with practitioners concerning over 75 notices of intent to deny asylum applicants from 11 different countries and some final decisions;<sup>4</sup>
  - attendance at or review of regular INS liaison meetings at the local and national level;
  - examination of applicable laws and regulations and recent federal court decisions;
  - examination of policies and procedures of the Central Office on Refugee Asylum and Parole in Washington, D.C. and the regional asylum offices.

Law Student Assistance. The 26 law students, who worked for the Study Project during the period of the interim report, conducted their work under faculty supervision, with additional supervision, sites visits, and training from Sarah Ignatius or Deborah Anker. Each student

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<sup>1</sup> The 56 countries are Afghanistan, Albania, Angola, Armenia, Bangladesh, Bulgaria, Burma, Cameroon, People's Republic of China, Colombia, Croatia, Cuba, Dominican Republic, Ecuador, El Salvador, Eritrea, Ethiopia, Ghana, Guatemala, Haiti, Honduras, Jordan, India, Iran, Iraq, Kuwait, Lebanon, Liberia, Libya, Lithuania, Mali, Mauritania, Mexico, Mongolia, Morocco, Nicaragua, Nigeria, Pakistan, Palestine, Peru, Philippines, Poland, Romania, Rwanda, Russia, Somalia, South Africa, Sri Lanka, Sudan, Surinam, Syria, Uganda, Ukraine, former USSR, former Yugoslavia, Zaire.

<sup>2</sup> The number interviewed in each region are Arlington: 31; Chicago: 26; Houston: 36; Los Angeles: 65; Miami: 32; Newark: 44; San Francisco: 56.

<sup>3</sup> The five INS officials are the director of the Asylum Branch of the Central Office on Refugee, Asylum and Parole (CORAP); the Deputy Commissioner; the Acting Director, Office of International Affairs and Outreach (formerly the director of the Department of Justice Asylum Policy and Review Unit); the General Counsel; and the director of the Process Action Team.

<sup>4</sup> The notices of intent to deny are from five of the seven asylum regions (Arlington, Houston, Los Angeles, Miami, and Newark), encompassing applicants from 11 countries (Bulgaria, El Salvador, Eritrea, Ethiopia, Guatemala, Haiti, Nicaragua, Romania, Russia, Somalia, Ukraine).



received the same orientation to the Study Project and training in asylum law and procedure. The students assisted in the distribution of the questionnaire, the identification of attorneys and legal workers handling asylum cases in each region including members of the private bar, non-profit organizations, immigration consultants and others, and the interviewing of these practitioners. Many students also attended INS liaison meetings held by the asylum office in their region.

## SCOPE OF THE INTERIM REPORT

### Introduction

The Study Project is issuing this interim report after one year of study. The interim report is limited to an assessment of INS' success in implementing the structural reforms mandated by the 1990 asylum regulations, and to evaluations derived from the data collected over the course of the first year. The report also addresses the most visible and controversial asylum adjudication issue of the last year: the screening of Haitian refugees at Guantanamo Bay and the subsequent processing of their claims in the United States. The Study Project will issue a final report next summer that will comprehensively analyze the entire new asylum system.

### Criteria for Assessing the Asylum Process

As an interim document, the report assesses the new asylum process on the basis of INS' announced goals for the program: fairness, sensitivity of the legal process, faithfulness to the Refugee Act of 1980, consistency in adjudications, and efficiency. The purpose of this report is to help identify problems in asylum adjudication, perhaps the most sensitive task the INS undertakes. In that context, we welcome INS' response.

Many problems identified in this report may be the result of INS' initiation of a new program separate from the INS district offices, with new asylum offices and new staff operating under new regulations. Many of the asylum officers are not attorneys previously trained in asylum law or legal reasoning, and many of the asylum office supervisors lacked previous management experience. INS recognized many of these problems and is attempting to address them. The success of these efforts remain to be seen.

The problems associated with the asylum program are not unique within the INS. INS is a government agency frequently criticized by its own officials<sup>5</sup> and the General Accounting Office for its inefficiency and mismanagement.<sup>6</sup>

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<sup>5</sup> Memorandum of former INS General Counsel Raymond Mamboise (Jul. 1989) (characterizing INS as "totally disorganized"), reported in 66 Interpreter Releases 1169 (Oct. 23, 1989); Memoranda of former INS General Counsel William Cook (stating that INS "reorganization is a disaster"), reported in Interpreter Releases 1325, 1327 (Nov. 19, 1990); Dept. of Justice Inspector General, Internal Studies, reported in 68 Interpreter Releases 217-18 (Feb. 25, 1991).

<sup>6</sup> See U.S. General Accounting Office (hereinafter "GAO"), Immigration Control: The Central Address File Needs to Be More Accurate GAO/GGD-92-20 (Feb. 1992) (22% of the records reviewed had inaccurately recorded names and/or addresses of applicants and 9% of attorneys, resulting in 12% of the people not receiving notice of hearings in immigration court). See also GAO, Immigration Management: Strong Leadership and Management Reforms Needed to Address Serious Problems GAO/GGD-91-28 (Jan. 1991); GAO, Financial Management: INS Lacks Accountability and Controls Over Its Resources GAO/AFMD-91-20 (Jan. 1991); GAO, Information Management: Immigration and Naturalization Service Lacks Ready Access to Essential Data GAO/IMTEC-90-75 (Sept. 1990); GAO, INS Bonds Delivery: Stronger Internal Controls Needed GAO/GGD-88-36 (Mar. 1988); GAO, Criminal Aliens: Majority from the New York City Area Not Listed in INS' Information Systems GAO/GGD-87-41BR (Mar. 1987); GAO, Immigration Reform: Systematic Alien Verification System Could Be Improved GAO/IMTEC-87-45BR (Sept. 1987).

Mr. MAZZOLI. Mr. Stein.

**STATEMENT OF DAN STEIN, EXECUTIVE DIRECTOR, THE  
FEDERATION FOR AMERICAN IMMIGRATION REFORM**

Mr. STEIN. Mr. Chairman, thank you. Again, I very much appreciate, as we all do, your leadership in responding to this issue so promptly—you and the vice chairman, as well—with two very important pieces of legislation, both of which we have analyzed and in part, support.

We are naturally interested in how we can get a handle on asylum, which is now in danger of swallowing up the corresponding refugee program in size and magnitude; and, more importantly, the financial burden on the taxpayers.

There are 5½ billion people now, worldwide, and many of them want to move. Nearly 21 million visitors came through our airports last year, and an astounding 300 million non-U.S. citizens legally enter each year by air, land, and sea.

Anyone who reaches this country can ask for an asylum hearing. How can we apply, for example, effective national security risk assessment and still manage the workload, the backlogs and the inevitable abuse of the system?

The crux of the problem is—and this is something we have been pointing out as this asylum corps was being formulated in the 1980's—how do you provide elaborate procedural process for asylum applicants when your potential class size is unlimited? Under the banner of the procedural process established under the new regulations, we have a very elaborate process, which has become rather burdensome, costly, and is incapable of effective administration.

As we have seen in Europe, in Germany, and several other countries, when nations adopt asylum policies, which are incapable of effective administration, the perception of abuse can create a backlash. When someone gets asylum fraudulently, they are jumping in front of what are now 3.5 million people waiting in line under the permanent residence visa queues, as well as many other people who might have intended to comply with the law.

I would like, with your permission, Mr. Chairman, to introduce two articles, one by Arthur Helton and one by me in this week's National Law Journal on this issue.

Mr. MAZZOLI. Sure. Without objection, it is so ordered.

[The referenced material follows:]

# THE NATIONAL LAW JOURNAL

*The Weekly Newspaper for the Profession*

## Uncontrolled Right of Entry Poses a Threat

BY ARTHUR C. HELTON  
*Special to The National Law Journal*

NOTORIOUS incidents inspire bad policy. Such is the case with recent proposals to restrict the rights of refugees, animated by reports of an asylum applicant suspected of the January 1993 shooting of CIA employees outside the agency's headquarters in Virginia, and of an individual who

*Mr. Helton is a lawyer and director of the Refugee Project of the Lawyers Committee for Human Rights.*

overstayed his visa and is alleged to have been involved with the Feb. 26 bombing at the World Trade Center in New York.

These tragic events have been cited as justification for reinvigorating proposals made last year in response to the publicity about undocumented asylum-seekers at New York's Kennedy Airport. They include plans to limit access to immigration procedures by screening aliens abroad, expanding detention capacity for arriving aliens, accelerating the hearing procedures to exclude such individuals at airports

# Fear of Terrorism Is No Excuse for Inhumanity

penditures increased from \$22 million to \$189 million.

During the same period, the number of criminal aliens arrested by the INS increased from 12,500 to 35,500. Since 1988, Congress has enacted provisions mandating the detention and removal of aliens convicted of serious crimes, such as those involving drugs or violence. While it is understandable that the immigration agency should detain criminal aliens before deportation, it is less clear why it incarcerates many

ing or an administrative appeal, and with only limited judicial review. The due-process safety net for refugees in the United States would be largely removed by this proposal.

Such proposals for summary adjudication, including one to suspend for a year the remedy of asylum itself, would jeopardize basic fairness for refugees seeking asylum from persecution. The provisions are incompatible with international standards and constitutional law. At a minimum, access to legal counseling and assistance, especially trained professional adjudicators, an effective appeal and judicial review of denials would be required. Lesser safeguards would be repugnant, particularly given the recent summary return of Haitian boat people intercepted on the high seas.

The American immigration process surely requires additional discipline, and there should be an early, high-level review by the new administration to ensure that policies are both effective and humane. Specifically, it will be incumbent to establish an asylum adjudication procedure that is capable of deciding claims fairly and expeditiously in order to recognize genuine refugees and avoid attracting spurious claimants. Of course, additional resources and new efficiencies will be needed to accomplish this objective.

Fundamentally, the human rights of genuine refugees must not be violated in the name of reform. Our policy-makers must resist politically expedient measures that can only undermine the humanitarian consensus regarding the protection of refugees.

asylum-seekers. In April 1992 the immigration agency initiated a release program based on rational criteria. Those applicants who establish a "credible fear" of persecution may be released as long as they can show that they are not likely to abandon and pose no danger to the community. Since the inception of the program, INS attorneys have interviewed 1,551 arriving asylum-seekers and recommended release for 507 (33 percent). While implementation has been slow and uneven, nothing should be done to undermine the essence of this beneficial, new program. Indeed, it should be codified in statute.

But a threat to such agency reforms arose in March 1993, when Senate Republicans, responding to popular outrage at the recent tragic events, proposed to bar from entry into the United States "any alien" who uses an invalid passport or visa to travel here, including a person seeking asylum from persecution. The proposed legislation would establish summary removal procedures for such refugee applicants, in violation of international standards and undermining burden-sharing.

## Unfair Procedures

While the legislation would not bar those who could show "a credible fear of persecution" upon return, the procedures by which this determination would be made would be neither fair nor reliable. The legislation would depart radically from current asylum procedures. Decisions would be made by low-level immigration inspectors at airports without an evidentiary hear-

## The rights of genuine refugees must not be violated in the name of reform.

other aliens arriving in this country, including those seeking political asylum. The cost of their detention is well in excess of \$50 million per year.

In 1984, the United States and other members of the governmental Executive Committee of the Office of the United Nations High Commissioner for Refugees urged, "[i]n view of the hardship which it involves, detention should normally be avoided." But the INS, until last year, has continued a costly policy of automatically and unnecessarily detaining many individual

protection of genuine refugees and render asylum another casualty of the terrorist attacks.

Refugees are often forced to flee persecution in irregular and unauthorized ways. They may have no travel documents or even identification papers. Indeed, if individuals were able to obtain a passport or permission to leave from their home countries, their papers might well jeopardize their claims for refugee protection. Such travelers include refugees from Afghanistan, China, El Salvador, Ethiopia, Haiti, Iran and Iraq who have fled torture, execution or inhumane detention.

There has been a recent proposal to establish pre-inspection facilities at airports abroad. But such an approach, relying upon the cooperation of the foreign government, could have the effect of creating an impenetrable exit barrier for genuine refugees. At a minimum, such facilities should not be established in countries that violate the fundamental human rights of individuals or that produce refugees. Nor should they be set up in countries of transit that fail to respect the rights of refugees to receive protection.

## Yet More Detention

Another suggestion is to expand the detention capacity for aliens. Currently, the U.S. Immigration and Naturalization Service is capable of detaining 6,239 individuals at any one time. Yet much of the scarce detention space and program resources are devoted to detaining innocent asylum-seekers upon arrival in the United States. Between 1986 and 1989, INS detention ex-



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# THE NATIONAL LAW JOURNAL

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*The Weekly Newspaper for the Profession*

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Monday, May 3, 1993

THE NATIONAL LAW JOURNAL

# Podium

## Immigration Dilemma: Humanity vs. Terrorism America Must Remain a Haven

BY DANIEL A. STEIN

Special to The National Law Journal

THE RECENT bombing of the World Trade Center and the sniper shooting outside the CIA have highlighted the problem of political asylum fraud at our international airports. Just about anyone can obtain a work permit and years of residency simply by asking for political asylum.

Apologists for the status quo have

argued that we must admit all claimants pending a comprehensive, trial-type hearing because of the unacceptable risk of sending even one person back to his or her persecutors. The events of the past several months have raised the question of whether admitting such people, before determining whether they pose a threat to the United States, poses an unacceptable risk to the American public.

The problem is one of balance. Before 1980, most people granted asylum

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*Mr. Stein is executive director of the Federation for American Immigration Reform in Washington, D.C.*

# False Asylum-Seekers Crowd Out True Refugees

Continued from page 15

and suspending the asylum provision. Each approach could compromise the hard-earned reputation of the United States as a nation that grants asylum to people who, through unforeseen events, have been persecuted and cannot be sent home. But from 1980 to 1993, procedural opportunities for asylum have been blown wide open.

There are 3½ billion people worldwide. Many want to move. Transportation is cheap. Nearly 21 million visitors pass through American airports of entry each year; an astounding 300 million non-American citizens legally enter annually by land, sea and air. Hundreds of millions more worldwide would like to move to a nation such as America.

If anyone who reaches this country can ask for an asylum hearing, how can we apply effective national-security-risk assessment and still manage the workload, the backlogs and the inevitable abuse of the system?

The problem is how to provide an elaborate procedural process for a very large number of people who are not in a class as privileged as the political asylees. Under the banner of some self-absorbed and ill-defined "humanitarianism," the Department of Justice has adopted a fraud-ridden and unworkable asylum system that is neither constitutionally required nor mandated by existing international obligations.

Immigration regulations lay out the burdensome scheme: Asylum applicants are entitled to a hearing, representation of counsel, opportunities to cross-examine hostile witnesses, transcripts, right of appeal and many of the other procedural protections we normally associate with the criminal justice system. The regulations in which these entitlements are set out meet a fairly lax evidentiary burden, are conducted under about 100 administrators, law judges and a newly created

corps of 120 asylum officers.

## Unintended Magnet

The hearing delays are themselves a magnet. From fewer than 5,000 applications a year in 1980, asylum claims have exploded to more than 100,000 a year. The system is so overwhelmed it never designed to cope with a workload of this size. It now takes a year and a half to obtain a hearing. In itself an inducement to fraud. Work authorization and complete liberty are provided in the interim. Since most who come here do so to work, many never even show up for a hearing, and there is no criminal sanction for failure to appear.

Consider the case of Amir Ahmad Kandi, the Pakistani who obtained a pending political asylum claim while still in the United States. He was with two CIA employees last January. He could purchase property, marry an American citizen and could probably have used most state-administered welfare programs even before his hearing came up.

All this stands in stark contrast to the alien who seeks to apply as a refugee from outside the United States. Currently there are some 18 million officially designated "refugees" under the auspices of the United Nations high commissioner for refugees. Refugees are admitted through multilateral resettlement agencies and are provided federal resettlement assistance through a formal consultation process that allocates slots to regions where refugees are located worldwide. These people have no elaborate process guarantees, no right to counsel and no right to appeal.

## Suggested Remedies

Solutions are not wanting. But they require a willingness to get tough on fraud.

• First, an alien should not be accorded preferential treatment simply because he or she entered this country illegally first. Asylum and refugee claims should be treated identically: a brief interview at the port of entry, followed by approval or denial.

• There should be summary denial for claims that are factually credible or in which the alien has acted inconsistently with an asylum claim for forum or nation shopping, passing through several safe countries, destroying documents without good

## Just about anyone

can get years of residency by asking for political asylum.

cause or failing to make an asylum claim on a timely basis (within 15 days). There should also be international applications tracking, so a claim denied in, say, Switzerland also operates as a denial in the United States. • Federal citizenship or immigration documents must be improved and a national birth-death registry established. This would prevent asylum applicants from purchasing asylum weapons and incendiary devices, or using phony asylum claims to gain access to public medical assistance for pre-existing conditions

• Detention space must be expanded. Those with credible claims, but for whom approval cannot be automatical-

ly granted, should be detained pending a final determination.

• Asylum should be granted on a temporary and conditional basis. The purpose of asylum should be to provide temporary protection for those working for positive political change back home. It is not intended as a back-door immigration program for those lucky (or wealthy) enough to make their way here. Aliens granted temporary asylum should be given 12 months to obtain an individual basis, based on some identifiable pattern of conduct, or political belief, or less frequently, because of race or religion.

• If asylum-seekers are ultimately granted permanent residence, this should be limited to situations in which there is no foreseeable prospect for individuals to return to their native country. Those ultimately given permanent residence should be deducted from annual immigration caps for that alien's nationality. This would ensure that there is discipline in the system and would encourage the alien to stay in the country. It would also help to keep the legal interpretation of political asylum.

• Improved international criminal data tracking and enhanced identification procedures must be installed, using handprint readers and other new techniques. Through better information, the United States can improve its national security risk assessment at America's ports of entry.

• America's obligation to provide refuge for the truly persecuted does not require it to lose control over its borders or establish a program by which it can establish legislative reform or enhance legislative reform can be based on asylum policy that the rest of the world will respect

Mr. STEIN. Essentially, my article indicates that the principles, which undergird any reform, ought to be, first, that an alien should not be accorded preferential treatment, simply because they determined to enter the country illegally, first, to apply for asylum, rather than applying, say, as a refugee overseas or in another country or through multilateral settlement agencies.

The principle should be the same in both refugee and asylum policy. There should be one brief interview at the port of entry, followed by an approval or denial.

Right now—and this is an important effect—aliens are at an enormous advantage, procedurally, if they obtain physical presence within the United States, first.

Although the law does place the burden of eligibility on the claimant, the claimant need only make self-serving, uncorroborated allegations of likely persecution to shift the burden on the Government of disproving the allegation.

Because the hearing is occurring thousands of miles from the area of risk, the Government is forced to disprove those allegations without meaningful access, in many cases, to firsthand information. Many asylum decisions, therefore, are simply credibility determinations of the declarant.

Second, there ought to be summary denial for claims which are not credible. I think that Mr. McCollum's bill really deals with that squarely and head on. We applaud it warmly.

Or, where the alien has acted inconsistently with an asylum claim by forum shopping or nation shopping, passing through several safe countries, destroying documents without any good cause, failing to make an asylum claim on a timely basis—which your bill excellently addresses—as well as the need for international applications tracking, so that a claim filed in Switzerland or Belgium, and denied, would also operate as a denial here.

Over the course of the 1980's in a couple of key settlements, the Department of Justice negotiated away its ability and its authority to take the circumstances of entry into consideration in adjudicating asylum claims. An aliens, acting inconsistently with asylum status—that behavior should be a proper part of the adjudication record.

Third, Federal citizenship and immigration documents have to be improved. You have heard us talk about a national birth/death registry.

Certainly, in the context of a national health care system, this question of a national birth/death registry and a national citizenship document of some kind is timely, also in part because of several other issues, such as gun control, motor-votor, and national health care and immigration enforcement.

Detention space would definitely have to be expanded. We would agree with former Commissioner McNary that it is not the “be-all, end-all” there. You need a balanced approach.

Asylum should be temporary or conditional. The purpose of asylum is not a back door to permanent immigration. It is to provide temporary protection for those working for positive political change in their home nation.

Aliens granted temporary asylum should be given it temporarily, on an individual basis, based on some identifiable pattern of conduct, political belief, or less frequently, because of race or religion.

Next, granting permanent residence to asylum-seekers should be limited to situations where there is no foreseeable prospect for individuals to return to their native country.

Ultimately, if they are given permanent residence, then, in fairness to the general public, these should be deducted to the annual immigration caps for that alien's nationality.

This would ensure that there is some discipline in the system, as Arthur Helton likes to refer to it, and it would encourage the immigration bar to keep a tighter rein on the breadth of the legal interpretation of "asylum."

Lastly, improved international criminal data tracking and enhanced identification procedures must be installed, with hand scanners, for example. The technology, instead, is ignored. Instead, we are falling behind all of our European friends and allies in acquiring the new technology that could improve inspections and help us detect known terrorists and other criminals.

Our obligation to provide refuge is for those who are truly politically persecuted, which is an important role for this country, but does not require us to lose control over our borders. The no-show rate and the denial rates of 82 percent lead us to conclude that the majority of asylum cases might be frivolous or fraudulent.

Since aliens can acquire work authorization simply by making the claim—and work authorization in itself is a highly prized goal for many aliens entering illegally or violating nonimmigrant status—merely applying is all many ever intended to do anyway.

The Schumer bill has some good features, including establishing the principle of summary exclusion. Arguably, however, because there are so many departure points in the United States, its limited applicability would just cause the problem to move elsewhere.

Your bill has a number of very important things, as I spell out in my testimony, which we think are excellent. I did mention nonrefoulement. I can't pronounce it.

Mr. MAZZOLI. I asked my loyal, wonderful, and articulate staff to explain the word and to pronounce it for me, in that order. I had a hard time understanding either the explanation of it or the pronunciation of it. Therefore, we may decide to knuckle under to reality on that.

Mr. STEIN. We would encourage you to stick with language that we are all familiar with.

However, certainly, the time requirement is really a major, important step. I mean, after all it has been over 10 years since the Congress has really considered the whole philosophical question of asylum, and what its role is, with regard to the rest of our immigration program.

These are important and constructive steps. The absolute requirement for fingerprinting and photographing is important.

Any alien who refuses to submit to these requirements, we think, should be absolutely ineligible for consideration for any benefit.

All in all, they are a positive step. We look forward to working with you on these. We thank you very much for your work.

Mr. MAZZOLI. Thank you very much, Dan.



[The prepared statement of Mr. Stein follows:]

## PREPARED STATEMENT OF DAN STEIN, EXECUTIVE DIRECTOR, FEDERATION FOR AMERICAN IMMIGRATION REFORM

Thank you, Mr. Chairman and members of the subcommittee, for the opportunity to testify before this subcommittee. My name is Dan Stein, and I am the executive director of FAIR, the Federation for American Immigration Reform. Today, I would like to share with you FAIR's work and research on asylum and abuse of the asylum process. I hope our contribution will be of assistance to you and the subcommittee.

FAIR is a national non-profit membership organization, working to end illegal immigration and to reduce legal immigration to a level consistent with long-term national population stabilization and the national need.

Because of profound policy and technical problems in achieving the aforesaid goals, FAIR has recently called for a comprehensive moratorium on immigration until progress is made in key legal and administrative areas.

### Background -- growing pressures on the borders

We've all seen it on "60 Minutes." Americans can't pick up their newspapers these days without seeing something about immigration or asylum. One thing is certain, something is wrong -- terribly wrong -- with our immigration policy and the Immigration Service. Illegal immigrants pour into the country each day and each night. Immigration fraud and alien smuggling are commonplace in all 50 states. Violation of our immigration laws is an ever-growing phenomenon. Lines of people seeking immigration benefits at immigration offices around the country, and at U.S. consulates overseas, seem endless while backlogs of unprocessed applications continue to expand.

But these things are only the symptoms of a more serious problem: World population growth.

### World population growth

Rapid world population growth is placing untenable immigration pressures on the United States. In the world's less developed regions, this growth is accompanied by the development of modern communications and transportation technology. This facilitates international migration pressures unprecedented in human history.

And it will only get worse -- dramatically worse. The United Nations estimates that 90 million people are now added to the population of the planet each year. Within the next decade, more people will be added than there were in the entire world in 1800 (in fact, when Thomas Paine wrote "prepare in time an asylum for mankind," in his famous 1775 essay *Common Sense*, world population was far less than one billion, and barely above the level it had averaged for most of human history.) Just two generations ago, global population was 2.5 billion. During 1993, we will reach the 5.5 billion mark, and the UN estimates that we will exceed 10 billion in the next century before population growth levels off.



This powerful demographic force will explode in an unprecedented wave of human migration in the 21st century as tens of millions of persons seek economic opportunity and escape from environmental disaster. The patterns have just begun to emerge and will grow with intensity in the decades to come.

In much of the less developed world, we have witnessed the flight from rural to urban areas over the past two generations. Those in the countryside are moving -- voting with their feet -- in response to poor and declining living conditions. Pushed from the countryside and pulled by the cities' bright lights and economic opportunities -- real or imagined -- tens of millions have elected to crowd into teeming metropolitan areas. Mexico City, for example, with 3.5 million people as recently as 1950, now holds around 18 million. What we have witnessed to date is only the tip of the iceberg. The UN estimates that between 1987 and 2025, the urban population of the Third World (hopefully no longer "Third"), will have grown by 2.75 billion people, twice the amount that we added during the period from 1950 to 1987.

Along with rapid urbanization, the population explosion in the less developed world has resulted in a vast labor force increase. The huge cohort born in the 1970s is only now entering the labor market, overwhelming the economies of many poorer nations. The Third World labor force has increased by more than 500 million since 1975. By 2025, another 1.4 billion people will be seeking employment, a number more than double the present total labor force of the more developed regions.

The great majority of these workers will be urban-based or urban-bound. In country after country, however, urban unemployment and underemployment already run high, affecting as much as half the labor force. Still, there are millions of new entrants each year, the products of rapid population growth from a generation earlier. Driven by rising expectations but facing plummeting prospects, great numbers have determined to take their chances and migrate, legally or illegally, to destinations in the more developed countries.

At a time of growing migration pressures around the world, we must now face the reality that resource consumption and environmental considerations should limit the number of people the U.S. can absorb.

High unemployment and growing domestic pressures add to the stress and strains and force the nagging question of why the U.S. continues to admit more immigrants than all other nations on earth combined.

Regrettably, U.S. immigration policy takes none of these factors into consideration. Immigration numbers are constituent-generated, rather than being fashioned as part of a national population/labor policy. Congress increases numbers without regard to their future impact on the nation. Two years ago, Congress enacted

legislation that so increased immigration the Census Bureau had to adjust upward by nearly 100 million the U.S. population projections for the year 2050.

Immigration policy affects a huge array of concerns:

- 1) U.S. population size, growth, and fertility rates;
- 2) U.S. population density in America's coastal counties;
- 3) U.S. aggregate resource and energy consumption and particulate pollution;
- 4) Pressure on the U.S. infrastructure;
- 5) Impacts on the U.S. labor market;
- 6) Impact on basic education, social and health services; and
- 7) Impact on crime, both domestic and international.

These factors need to be incorporated with more formality into the policy-making process. We need more and better involvement of state and local governments, and more diverse input from Federal agencies beyond the Department of Justice. Until then, we fear there will never be a coherent national immigration policy.

#### **Asylum fraud -- a predictable and growing problem**

There is a television commercial running this year in which a house sits surrounded by flashing lights and neon signs telling all the world the resident family is on vacation, and that the house is easy pickings. The ad evokes an image reminiscent of our immigration and asylum policies: "Lights are on, and nobody's home." Anyone who can afford the price of an airline ticket to this country can gain entry and then be amply rewarded with work authorization, social security number and the full benefit of the U.S. social welfare and health system. It has become a potent magnet.

Now there are security implications, as well. The recent bombing of the World Trade Center and the sniper shooting outside the CIA have highlighted the problem of political asylum fraud at our international airports: just about anyone can obtain a work permit and years of residency simply by asking for political asylum.

Supporters of the status quo have argued that we must admit all claimants pending a comprehensive trial-type hearing, because of the unacceptable risk of sending even one person back to his persecutors. The events of the past several months have raised the question of whether admitting such people, prior to determining whether they pose a threat to the United States, poses an unacceptable risk to the American public.

The problem is one of balance. Prior to 1980, most people granted asylum had originally entered legally, and were people who, through unforeseen political changes after arrival, could not be sent home. But from 1980 to 1993, the avenues and procedural opportunities for asylum have been blown wide open.

As I mentioned, there are five and a half billion people worldwide. Many want to move. Transportation is cheap. Nearly 21 million visitors pass through American airports of entry each year; an astounding 300 million non-American citizens legally enter annually by land, sea and air. Hundreds of millions more worldwide would like to move to a nation such as the United States.

If anyone who reaches this country can ask for an asylum hearing, how can we apply effective national security risk assessment and still manage the workload, the backlogs and the inevitable abuse of the system?

The problem is how to provide elaborate procedural process for asylum applicants when the potential class size is unlimited. Under the banner of some new asylum adjudications bureaucracy, the Department of Justice has adopted a fraud-ridden and unworkable system that is neither constitutionally required, nor mandated by existing international obligations. Immigration regulations lay out the burdensome regulatory schemes: asylum applicants are entitled to a formal hearing, representation by counsel, opportunities to cross-examine hostile witnesses, transcript, native language interpreter, right of appeals and right to re-opening motions, and many of the other procedural protections we normally associate with criminal process. These elaborate hearings in which the alien is required to meet a fairly lax evidentiary burden are conducted under a total of about 100 administrative law judges and a newly-created corps of 120 asylum officers.

#### Unintended magnet

The hearing delays are themselves a magnet. From less than 5,000 applications a year in 1980, asylum claims have exploded to over 100,000 a year and are growing. The system was never designed to cope with a caseload of this size. It now takes a year and a half to obtain a hearing, in itself an inducement to fraud. Work authorization and complete liberty are provided in the interim. Since most coming here do so to work, many never even show up for a hearing. Yet, unlike the criminal proceeding, there are no separate penalties for Failure to Appear.

Consider the case of Amir Ahmal Kanzi, the Pakistani who orchestrated a pending political asylum claim while he planned and (allegedly) murdered the two CIA employees last January. He could purchase property, marry an American citizen and could probably have used most state-administered welfare programs before his hearing came up.

All this stands in stark contrast to the alien who seeks to apply as a refugee from outside the United States. Currently there are some 18 million officially-designated "refugees" under the auspices of the United Nations High Commissioner for Refugees. Refugees are admitted through multilateral resettlement agencies, and are provided federal resettlement assistance through a formal consultation process allocating slots to regions where refugees are located worldwide. Refugee applicants have no elaborate

process guarantees, no right to counsel and no right to appeal. Such inconsistent treatment between asylum-seeker and refugee applicant invites abuse.

### Solutions

Solutions are not wanting. But they will require a willingness to get tough on fraud.

- First, an alien should not be accorded preferential treatment simply because he or she entered this country illegally first. Asylum and refugee claims should be treated identically: one brief interview at the port of entry, followed by approval or denial. Right now, aliens are at an enormous advantage procedurally if they first obtain physical presence within the United States.

Although the law places the burden of eligibility on the claimant, the claimant need only make self-serving uncorroborated allegations of likely persecution to shift the burden onto the government of disproving the allegation. Because an asylum hearing is occurring thousands of miles from the area of risk, the government is forced to disprove allegations without meaningful access to first-hand information. Most asylum decisions are, therefore, credibility determinations.

- There should be summary denial for claims that are facially not credible, or where the alien has acted inconsistently with an asylum claim by forum/nation shopping, passing through several safe countries, destroying documents without good cause, or failing to make an asylum claim on a timely basis (within 15 days of arrival in the U.S.). There is also a need for international applications tracking, so a claim denied in, say, Switzerland or Belgium, also operates as a denial in the United States.
- Federal citizen/immigration documents must be improved and a national birth-death registry established. This would make it possible to insure that mere asylum applicants are not permitted to purchase assault weapons and incendiary devices, or to use phony asylum claims to gain access to American public medical assistance for pre-existing medical conditions.
- Detention space must be expanded. Those with credible claims, but for whom approval cannot be automatically granted, should be detained pending a final determination.
- Asylum should be granted on a temporary and conditional basis. The purpose of asylum should be to provide temporary protection for those working for positive political change in their nation. It is not intended as a back-door immigration program for those lucky (or wealthy) enough to make

their way here. Aliens granted temporary asylum should be given it temporarily, on an individual basis, based on some identifiable pattern of conduct, or political belief, or, less frequently, because of race or religion.

- The granting of permanent residence to asylum-seekers should be limited to situations where there is no foreseeable prospect for individuals to return to their native country. Those ultimately given permanent residence should be deducted from annual immigration caps for that alien's nationality. This would insure that there is discipline in the system, and would encourage the immigration bar to keep a tight rein on the breadth of the legal interpretation of "asylum-seeker."
- Improved international criminal data tracking and enhanced identification procedures must be installed, using handprint readers and other new techniques. Through better international "handscan" criminal identification, the nation can improve its national security risk assessment at American ports of entry.

America's obligation to provide refuge for those truly persecuted does not require us to lose control over our borders or establish a program wide open to fraud and abuse.

Mr. Chairman, FAIR emphatically supports the principle of asylum and the humanitarian principle of providing refuge for those truly facing imminent death or torture at the hands of persecutors. What we desire to evaluate today is our policy deficiencies that allow aliens to successfully prosecute patently sham requests for asylum as an automatic fast track around our immigration laws and limits. Mr. Chairman, your introduction of H.R. 1679, indicates that you are also concerned that our current asylum policy is badly in need of change.

Unfortunately, asylum *has* become a track for evading the legal immigration process. A fraudulent request for asylum is instantly rewarded with quasi-residence in this country. Over half of asylum applicants called for interviews fail to appear. Most are never seen or heard from again by the INS. When they fail to appear for scheduled hearings and appearances, they submerge themselves in our society, enjoying benefits and privileges gained through fraud and deceit.

**A lack of genuine identification.** One of the greatest problems is the fact that most fraudulent asylum claimants are never identified with certainty. Change a vowel or drop a consonant, and there is no way to learn of their past history and conduct. From the experience of recent events, we know some have brought terrorism and violence to this country. We cannot even say this is a remote aberration because so many requesting asylum intentionally conceal their true identities. People arrive using false documents or



arrive with no identification whatsoever; we have no way of determining who is truly deserving and who is not.

Basic principles that must be contained in corrective legislation include the following:

Any alien attempting to enter this country from a safe third country should be presumptively ineligible for asylum. Persons fleeing danger should take the advantage of the succor at the first available opportunity. Again, no forum/nation shopping.

Any alien who enters this country without inspection, without documents or with fraudulent documents should be ineligible for asylum unless the alien is directly fleeing a persecuting home nation and can demonstrate beyond a reasonable doubt that use of such documents was necessary to successfully depart from that location. Then, only after true identity is established, should the alien be considered for asylum.

Use of eleventh hour asylum claims in deportation or exclusion proceedings, only as a ruse to forestall deportation, is common practice and must be eliminated. Immigration attorneys who regularly pursue this as a tactic in deportation or exclusion proceedings should also face meaningful discipline, including disbarment from immigration practice.

Any legislation this committee considers should also contain disincentives for those who would make frivolous or fraudulent claims. Many aliens file frivolous or fraudulent cases and fully pursue them, often on advice of counsel, motivated by the remote hope of approval and the promise of eventual permanent residence. It is not that so many are successful, but the incentive is such that they keep their cases in the system to the bitter end, just on the hope of off-chance success. Because denials must be justified, bad cases usually require more time and work in the adjudication process than do good cases. They steal time that could be better spent working on truly deserving cases. Incentives for prosecuting the phony cases should be diminished.

Several steps must be taken to discourage frivolous and fraudulent claims. Your bill, Mr. Chairman, addresses a major incentive to pursue a false claim, the reward of qualifying for permanent resident status only one year after having had an asylum request approved. Your bill would add another year to the qualifying time. Since asylum is actually intended to give *temporary* refuge and one, even two years, is really a very short time, I suggest you consider an even longer qualifying period of at least five years.

In 1991 the INS formed as special "Asylum Unit" whose only duties are to adjudicate asylum cases. Its officers are specially designated and trained as specialists in this function. The officers receive intense training in recognizing credible claims of persecution. They also receive training and constant updating of information on country

conditions around the world so that they can readily identify and recognize countries in which persecution is a serious problem.

According to statistics released by the INS for FY 1992, the first full fiscal year of operation of the new asylum unit, the unit began the year with a backlog of 134,999 cases. Even with its corps of specialists, the unit was able to adjudicate only 22,674 cases in the course of the fiscal year. Of those 22,674 cases called up for adjudication, 11,751, or a whopping 52% did not even respond to notification. Outright denials constituted 30% of the adjudicated cases. Only 4,019, or 18% of the cases adjudicated were found to be worthy of approval. (See Attached Chart A.)

With the combined "no-show" and denial rates of 82%, we can conclude the majority of asylum cases might be frivolous or fraudulent. Since aliens can acquire work authorization by merely making a claim of asylum, and work authorization, in itself, is a highly prized goal of most aliens who enter illegally or violate nonimmigrant status, merely applying is all many ever intend to do, anyway. The rewards for just applying are worthy of the effort, whether the alien has a meritorious case or not.

#### **The bills under consideration today**

Today, you are considering three bills before your subcommittee: H.R. 1153, H.R. 1355, and H.R. 1679. All three seek to control abuse of the asylum process. While each takes a somewhat different approach, each has its merits. Perhaps even more important, the problem is being taken seriously, and the bills provide an opportunity for open and necessary debate on immigration fraud that threaten our national security.

In our generosity and compassion we find it difficult to deny asylum to anyone, in the off chance that maybe a truly deserving soul might be missed in screening thousands of queue-jumpers. Unfortunately, our generosity and compassion have lead to the loss of integrity of this humanitarian process. We must reassess our policies for self-preservation and self-protection. Obviously, you and other members of your subcommittee who have sponsored or co-sponsored the legislation being considered here today have similar concerns.

I would like to offer comment about three bills, H.R. 1153, H.R. 1355 and H.R. 1679. As I said before, each seeks solutions to the same problem. The differences are in their approaches. The following is FAIR's position and opinion on each, taken in numerical order.

#### **H.R. 1153 (Schumer)**

H.R. 1153 would expand, substantially, preinspection at certain foreign airports. While seeming to be a simple solution to a complex problem, this bill seems to miss the

mark. The millions of dollars in extra expense of stationing several hundred inspectors and their families in overseas posts will reap disappointing rewards while putting even greater burdens on already stressed resources of the INS. Additionally, a number of countries in which it would be important or even essential to open posts would find it undesirable to have U.S. officers actively working on their soil. Even if diplomatic negotiations to achieve agreements were fully successful, they would result in a stationary and highly visible force of inspectors that could be evaded by even the least enterprising of would-be alien violators. The whole system of preinspection is easily avoided by simply departing from airports not covered by the program--something easily done in this day of high mobility and jet airline travel.

This bill would also make permanent the pilot visa waiver program that has been on trial since 1988. All reports are that the program has been generally successful, worthy of continuing on a permanent basis. But the bill would eliminate nonimmigrant control documents for aliens covered by the visa waiver program. Elimination of these documents would remove all possibility of monitoring departures of nonimmigrant aliens admitted under the waiver program. Aliens from waiver countries could turn into overstay problems, and it could take many years before the problem could be detected because of the simple lack of control documents to monitor their activities.

Elimination of the forms would add one more complication to an agency that is already stressed to the breaking point from more and more such new programs being loaded on it with few compensating resources. Removing controls is for a time when immigration is under control. This is not that time.

Preinspection stations would only be established in countries accepting the UN Protocol on Refugees and Asylees. Therefore, aliens seeking asylum, presumably, would be able to obtain it in the host country, and they could be rejected for boarding in the preinspection process. Procedures for handling asylum claims of visa waiver aliens seeking that status would be made the responsibility of the Attorney General who would issue regulations and procedures for processing them.

H.R. 1153 would institute summary exclusion for aliens applying for admission under the visa waiver program wherein an alien who is clearly ineligible for admission could be ordered excluded at time of inspection. Every alien applying under this provision does it under advisement that should they be so excluded, no appeal or other remedy would be available. Although this is a step in the right direction to help move exclusion cases along, it would apply to a minuscule number of cases and provide no real relief.

Another troubling feature of this bill is its proposal to institute a form of "citizen bypass" at airport inspections. This type of inspection asks the applicant for admission to do a "self inspection." Anyone with a U.S. passport would, in essence, get a wave-through. Rather than an immigration officer making citizenship determinations based on

an inspection, individuals are allowed to make a self proclamation by entering a special line, flash a U.S. passport and go straight to Customs inspection. Customs inspectors are interested in the merchandise, not the person. When this has been tried in the past, spot checks revealed many excludable aliens were found to have used this avenue as a method of evading immigration inspection. They would obtain counterfeit or altered U.S. passports or just boldly step into the U.S. citizen line, present a lot of suspicious luggage to Customs, capture the Customs inspectors' attention with their merchandise, pay their duty and then get passed out of inspection with little attention being paid to their documentation. It worked with such frequency that many inadmissible aliens felt it was worth taking the risk. Since illegally entering the U.S. consists of a few risks, what's another that just might bring success? The time saved by waving through citizens (real and otherwise) is just not worth the problems that will arise from the increased opportunity for fraud.

Until the United States, at the very least, develops a truly tamper-resistant and counterfeit-resistant passport coupled with biometric readers, expediting citizen inspections should not even be considered. Recently, the State Department, with a bit of fanfare, announced it would begin issuing a new style of passport. The new passport has been represented to contain certain security features that are supposed to make it more secure and fraud resistant. In actuality, the "hologram" (actually a kinegram) that is used as a so-called security feature can be easily duplicated with relatively unsophisticated equipment that is readily available, at modest cost, to any enterprising counterfeiter. As a matter of fact, we have information that a Hong Kong counterfeiting ring has already perfectly counterfeited the new passport, along with its "hologram" and is ready to put them "on the street" at this very moment.

Since passports are on a ten-year expiration cycle, it will take ten years to purge the passport universe of counterfeitable passports. No consideration should be given to changing inspections procedures for citizens until: (1) truly counterfeit and fraud-resistant passports are developed and in production and (2) the remaining vulnerable passports are near the end of the ten-year expiration cycle. Unfortunately, an opportunity to adopt such a passport is now being passed up the State Department, and we are being lulled into a false sense of security with a non-secure kinegram.

#### **H.R. 1355 (McCollum)**

H.R. 1355, also known as the "Exclusion and Asylum Reform Amendments of 1993," introduces several new concepts concerning entry into the United States, exclusion and deportation. This bill addresses a number of constituents of procedural gridlock that have made it virtually impossible for the INS to reasonably enforce the law and remove persons who have absolutely no right or claim to enter or remain in the United States. Aliens who surreptitiously cross our borders would, under the provisions of H.R. 1355, be considered applicants for admission for a year after crossing the border and subject to exclusion rather than deportation as is now the case. Also, under the provisions of this

bill, aliens attempting to enter the U.S. with fraudulent documents or by presenting no documents would be subject to summary or "special exclusion." That is, they would be subject to removal from the U.S. without a formal exclusion hearing before an immigration judge.

Aliens arriving from safe countries would be ineligible for asylum if they present phony documents or no documents at all. Aliens found in the U.S. within one year of arrival, after having arrived without being inspected and admitted by an immigration officer, would be considered not to have "entered" the United States and subject to exclusion, rather than deportation. Such aliens not having documents or having fraudulent documents would be subject to "special (summary) exclusion."

Judicial review would be limited to habeas corpus, and review under habeas corpus would be limited to two issues: (1) whether petitioner is an alien and (2) whether petitioner was lawfully ordered excluded. Courts would be excluded from procedural review and from granting declaratory or injunctive relief in exclusion cases. In criminal proceedings the courts would be limited to trying the criminal case and would be barred from hearing collateral attacks on the merits of aliens' exclusion or deportation proceedings.

Lastly, the bill would double the length of incarceration for persons who smuggle aliens, aid and abet the illegal entry of aliens or harbor aliens who are illegally in the United States.

We strongly support both the language and principles of this bill. Unless and until we take a tough stand against those who blatantly violate our laws by taking advantage of our traditional compassion and hospitality, illegal immigration will continue to increase and spin out of control. Rising crime by illegal immigrants, terroristic acts and other manifestations of unretarded illegal immigration will continue to haunt this nation. I urge you to strongly consider passing this bill into law. We must put teeth into our immigration laws if we are to have any hope of ending or even controlling illegal immigration.

#### H.R. 1679 (Mazzoli)

For the most part we find this a laudable bill. It addresses, head-on, the problem of asylum fraud. I must confess I am troubled, perhaps confused over the radical change in terminology for asylum. *Nonrefoulement* is a Gallicism, coined from the French verb *refouler*. We realize the term was actually coined by the United Nations in the creation of its protocol on refugees and asylum, but legislation is a hazardous vehicle to use to introduce a new word whose clarity through common usage has not been established. It is an open invitation to our litigious friends at the bar to quibble endlessly in our courts over its true meaning. FAIR suggests we avoid establishing new terms, like Temporary Protected Status or *refouler*, were refugee, asylee, parolee and immigrant will do.



Your bill, Mr. Chairman, sets time limits for filing. This is long overdue. Being able to carry around a potential request for asylum for years like a trump card to play when deportation appears imminent: Aliens should make a request reasonably, within 35 days of entry (although we'd say sooner).

A number of commendable and meritorious features in H.R. 1679 may be appropriate in other times, but, because of budget constraints, we must question their practicalities. A whole new class of officer would have to be trained and staffed. Severe time limits, which, if missed, would bring torrents of mandamus suits against the INS, further taxing its talents and resources. And all these expanded duties and responsibilities would come at a time when the Clinton administration is proposing substantial cuts in the INS budget.

The bill also contains some highly practical and necessary provisions. A clear and absolute requirement for fingerprinting and photographing of applicants as a stipulation for qualifying is very important. We hear reports from INS of aliens demanding asylum, yet they refuse to cooperate for fingerprinting (required by the 1940 Alien Registration Act) and photographing. Any alien who refuses to submit to these two requirements should not only be held absolutely ineligible for consideration for any benefit, but detention in such cases should be mandatory (which, of course, it cannot be because of lack of detention space).

I have to say we are deeply troubled by the bill's provision for class presumption of eligibility. FAIR has argued against class-based eligibility for several reasons, including its susceptibility to abuse. We see no reason to alter our views on this now. Such a broad provision opens the door quite widely to potential over-reach, and politically, it always seems impossible to offset class-based relief slots against future immigration quotas from that same nationality. It also creates an environment in which the prohibitions against certain criminals and persecutors will be virtually impossible to enforce. All qualifications for asylum should be considered only on a case-by-case basis. Pre-qualification by class is unwise and dangerous.

Your bill is an encouraging sign that serious thought is being given to a very serious problem. On behalf of FAIR, I commend you and this subcommittee for your work in trying to improve a situation that is rapidly deteriorating. Much more must be done, however.

### Conclusion

Part of the problem in controlling asylum abuse has been the critical lack of ability to detain excludable aliens while their claims for asylum are investigated and adjudicated. Referring back to the INS statistics for 1992, over half of those required to appear did not. Why should they appear when they were rewarded with everything they sought right up front: immediate release and work authorization? Your subcommittee should be

working in its oversight role to obtain detention resources for the INS. I know finding resources for anything in this time of austerity is difficult, but it is critical if we are going to bring control to this serious and expanding problem.

In conclusion, Mr. Chairman, fraudulent and frivolous asylum claims have become the rule, rather than the exception. Treating the patently false claims, as we should the authentic requests, robs precious resources from the already-strapped INS. Measures must be taken to stop rewarding fraud.

Thank you for the opportunity to present our views and recommendations to the subcommittee.

# Summary of Asylum Adjudications

By INS Asylum Unit FY 1992

Administrative  
Closings  
for Failure to Show  
52%

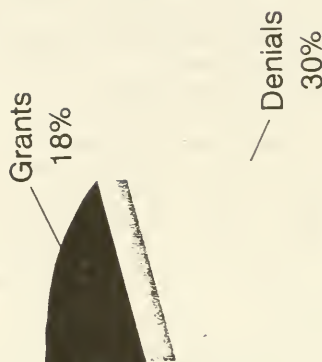


Chart A

Source: U.S. Immigration & Naturalization Service April 1993

Mr. MAZZOLI. Dr. Teitelbaum, it is nice to see you, again.

**STATEMENT OF MICHAEL S. TEITELBAUM, FOUNDATION  
EXECUTIVE, ALFRED P. SLOAN FOUNDATION**

Mr. TEITELBAUM. Thank you, Mr. Chairman. It is nice to be back.

I did not hear the previous panel, because the Commission on Immigration Reform is having a meeting today. Warren Leiden and I both hightailed it over from there. Therefore, I apologize if I repeat any points that have come up earlier.

I will not focus on the legal questions, because I believe you have had enough lawyers testifying here.

Mr. MAZZOLI. Some would say too many.

Mr. TEITELBAUM. I will focus on international trends and public policy questions, in very quick shorthand ways.

The first point I want to make is that current U.S. policies on asylum are peculiar, asymmetric, and frankly, quite illogical.

In my written testimony, I give two hypothetical examples, which illustrate the problem with the way we have developed the system. First is the case of a clearly bona fide refugee, who everybody agrees is a bona fide refugee.

We understand that 99 percent of the world's bona fide refugees will not be resettled in the United States—over 99 percent. When an application from such a person is denied, he or she has no right of appeal.

However, if the same person is able to travel to a U.S. territory and claim asylum, everything changes. It is the same person, but the geographical location is different. Then, everything about the way we treat the situation changes. You have heard some of that, and I will not go through it.

That is not logical. It does not make sense that the same person would be treated completely differently, depending on his or her physical location.

Now consider the second case of a person with a clearly fraudulent document, or no documents of any kind, and/or no credible claim to refugee status. If that person applies for refugee resettlement in the United States, one hopes that it would be denied by the officer considering the application, with no appeal possible.

Now the same person, with fraudulent documents or no documents, and/or no credible claim to refugee status, claims asylum. Again, we treat the person completely differently, depending upon the physical location. That is asymmetric, illogical, and does not make much sense.

It may have been done for good humanitarian reasons, but it does not make logical sense.

The second point is that the current situation was never contemplated by the authors of the Refugee Act in 1980. I won't say much about this; I think you know it. The asylum provision of that act was an afterthought, according to those involved. The number of 5,000 per year, for adjustment to permanent resident status, was based upon a faulty calculation about what numbers might be coming forward. It was based on a different definition of refugees, and then doubling it, as I remember the process. It was not well thought through. The people involved know that, and say that, quite openly.

Third, I like the new asylum adjudication system, with specially trained asylum officers. I think it represents a major improvement. I was critical of the previous system which, I think, was obviously driven by the cold war criteria, and was not fair and not balanced.

Yet, I think those of us who like the new system should acknowledge that it has sowed the seeds for its own destruction, by rapid swamping with numbers that are far too large for its limited capacities. We might as well acknowledge that that is a reality.

For those of us who wish to see a humane refugee and asylum policy, we can take two perspectives as our priorities. Some would say avoid all possible errors of exclusion; that is, cases in which a bona fide refugee is excluded incorrectly and, thereby, put in jeopardy.

We have heard a couple of examples, such as Mr. "A" and Ms. "B," examples of what might happen and how, under this kind of argument, one has to have a very substantial evaluation process or adjudication process, modeled after the U.S. judicial process of dispute resolution, to make sure that there are no errors of that type.

The second perspective supported by some people who support a humane refugee and asylum policy is to avoid errors of inclusion. These are the granting of extended or permanent residence to large numbers of mala fide claims, on grounds that this will discredit the system. I heard you say something along those lines, earlier.

The preferred mechanism here is the mechanism described in two of the bills—or, actually, in all three of the bills that are being considered by this subcommittee.

Current policies in the United States and in Germany are of the first type. There is copious due process, to avoid errors of exclusion. The proposals for change lean toward the second type.

I think both types should be described as aimed at preserving access for bona fide claimants, as you said in response to an earlier witness. I think it should be understood that it is just a difference in perspective as to what is primary. Should we avoid errors of exclusions or avoid errors of inclusion?

Fourth, the current asylum adjudication system that we have is responsible, I believe, for the otherwise odd, or peculiar even, U.S. policy of interdicting Haitian boats on the high seas.

Anyone who understands the system, knows that it is a simple fact that if Haitian boats reach U.S. territory under the current system, it will be incapable of promptly returning them to Haiti, including those who can not qualify under the refugee definition.

That is why both the predecessor administration and the current administration, despite the rhetorical differences, embrace this peculiar policy, in which screening is done anywhere but on U.S. territory. That is a weird outcome.

I would emphasize that most of those who support the system of asylum adjudication that produces such an outcome do so out of humanitarian concern. Yet, the fact is that the way the process works has led to a less humane policy than might otherwise be developed.

In short, the intended humanity of our current policy has rendered us inhumane, and weird. We screen claims anywhere but on U.S. territory, because we know the system can't function in the



way that it should. Many advocates of a very open asylum believe that, understand that, and have said that publicly.

Fifth—and I will say one sentence about this—this debate about asylum illustrates the ambivalence and confusion in American political circles about fraudulent documents which pervades debates about immigration policy, in general.

Finally, I would like to describe, quickly, the grave asylum situation in Europe and, especially, in Germany. That is because I think the sad story of the German asylum system has many lessons to teach us.

The German basic law or constitution—have you had a presentation on this yet today?

Mr. MAZZOLI. No, but I would enjoy one.

Mr. TEITELBAUM. All right. The German basic law or constitution provides that the politically persecuted shall be granted asylum. As that evolved in court rulings and other administrative decisions, it ended up meaning that anyone applying for asylum was granted a permit to work in the high wage German economy, for many years.

Now, this may sound familiar to you. This was a long time ago, by the way. This was in the 1970's.

It was an offer too good to refuse. When the German temporary worker program, which was analogous to the bracero program in the United States, was terminated in 1974, hundreds of thousands of Turks and others who previously would have been guest workers simply applied for asylum.

Between 1977 and 1980, asylum claims essentially doubled from year to year. There were 16,000 in 1977; 33,000 in 1978; 51,000 in 1979; and 108,000 in 1980.

By 1980, all of the major parties in Germany agreed that the asylum system was broken. It was being heavily abused. However, there was a political stalemate, which also will sound familiar in these halls, as to what should be done. The ruling Social Democrats rejected any change in the constitution.

Administrative and legal action was taken to reduce the economic incentives, or a quick fix, in other words. For several years, this worked. The numbers did decline, and declined substantially.

However, the quick fix had only temporary effects. Then there was rapid growth in asylum claims reappearing, and it promptly exceeded the previous highs that had led to the quick fix. Once again, there was political gridlock in the Bundestag, and so the numbers were allowed to grow, because no action could be taken politically.

In 1991, they reached 250,000. Last year, they doubled again, nearly, to an estimated 438,000 asylum claims in Germany.

There are two graphs attached to my prepared testimony from the United Nations High Commissioner for Refugees, which tabulate these trends. I think they are indicative of the kinds of potential that there is in this system.

Now, the chairman and the staff are aware of the terrible consequences of this failure by the German political system to deal pragmatically and humanely with an obviously unsupportable asylum system. Neo-Fascist political movements appeared, like ghosts from a repellent past. Violent assaults proliferated on peaceful resi-

dents, selected solely because they were "foreigners." There were 2,000 such violent assaults in 1992.

It was appalling to learn that these attacks had the tacit support of very large fractions of the German population. These were ordinary, nonxenophobic people, who had concluded that their political system had failed to deal with the issue.

On the positive side, after a number of particularly vicious and fatal attacks on "foreigners," millions of Germans joined hands in an impressive series of candlelight marches, protesting the xenophobic violence.

Painfully, with mutual charges of "nazism" and "terrorism" flying in all directions, the German political system has gradually sought to find a compromise between the uncompromising positions on this subject: those who want all foreigners excluded, and those who want anyone who claims asylum to be admitted.

The two major parties have finally agreed, in principle at least, to amend the constitution, which is something that they could have done, you will notice, back when they took the quick fix, and to take other measures that would limit the abuse of the asylum system.

Parliamentary debate on implementing the new asylum compromise is scheduled to be held shortly. These measures, I should note, continue to be attacked by the same politicians and the same groups—human rights groups, church groups, et cetera, that stalemated the issue for more than a decade.

In my opinion, these groups have, for high-minded motives, done terrible damage to the noble concept of asylum. The parallels with the American system, I think, are obvious.

The United States is behind the Germans, so to speak, in terms of asylum abuse. First, because the United States admits very large numbers of legal immigrants, and Germany does not. Second, unlike Germany, the United States has been unwilling to establish enforceable employer sanctions; hence, for unlawful residents, work in the United States is more available than in Germany, and the cost of abuse of the asylum claim is less necessary.

Third—and this is the international side of this—so long as Germany offers asylum on such favorable terms, it will be the preferred destination. It continues to be to this day. Should the new German asylum agreement be implemented, this will change. Hundreds of thousands of would-be asylum abusers will divert to other destinations that offer easier terms, as they did when the Germans did the quick fix. They then diverted to Denmark, Sweden, and elsewhere.

Mr. MAZZOLI. Give me one guess.

Mr. TEITELBAUM. Well, I would suggest that the United States and Canada offer the most promising destinations. If I were in the immigration or the asylum business, I would advise my clients to this effect.

Let me conclude with the opinion that the current asylum system is ill-configured to cope with current and perspective flows, and with the reality that large numbers of would-be migrants, with no credible claim to refugee status, are willing and able to exploit this humanitarian provision.

A truly humanitarian asylum policy requires three fundamental attributes—not one. Each side of this debate pushes one or another or a third point of view. I think it requires three if it is to be sustainable.

First, its procedures must be impeccably fair, and I would say, well-informed as well; so the trained asylum officer is an important component, in order to minimize errors of exclusion. There will be some, however. Inevitably, when you are dealing with hundreds of thousands of claims, there will be some errors.

Second, the procedures must be expeditious and firm, so as to minimize errors of inclusion.

Third, the policy must be such as to offer no incentives to refugees who are currently receiving protection in other countries, to use asylum claims as a means of jumping the queue of refugee resettlement.

The German political stalemate has destroyed—and I think that this is not an overstatement—the credibility of some wonderful words—the words “refugee” and “asylum.” Those words have no credibility any more in Germany.

My hope is that you will take action to avoid the same fate here.

Mr. MAZZOLI. Thank you very much, Doctor. We very much appreciate that. I am happy that you put this in that historical perspective.

[The prepared statement of Mr. Teitelbaum follows:]

*Testimony of  
Michael S. Teitelbaum  
before the  
Subcommittee on International Law, Immigration and Refugees  
Committee on the Judiciary  
House of Representatives  
April 27, 1993*

*Mr. Chairman, Members of the Committee, Ladies and Gentlemen:*

*I am Michael S. Teitelbaum, by profession a demographer, by occupation a foundation executive, at the Alfred P. Sloan Foundation in New York. From 1978-1980, I served as Staff Director of the House Select Committee on Population, where I first began to consider seriously the changing patterns of international migration and refugee movements. From 1987-90, I served as Commissioner of the U.S. Commission for the Study of International Migration and Cooperative Economic Development, which reported to the Congress and President in July 1990.*

*At present, I am Vice Chair of the eight-person Commission on Immigration Reform. I appear here at your request and in my own personal professional capacity. Perhaps I should add that since the Commission on Immigration Reform has not yet considered the issues surrounding asylum, I have no way of knowing whether my current views will change upon further consideration, nor whether these views are shared by my fellow Commissioners.*

*Since most of the Subcommittee and this panel are lawyers, and I am not, I do not propose to deal with the legal and/or constitutional issues surrounding the three bills on which I have been asked to comment. Instead, I will focus on the broader issues of public policy and international trends that must undergird consideration of any legal reforms.*

*Given the short time available, I propose to limit myself to six brief points, on any of which I will be glad to elaborate during the question period.*

*1. Current U.S. policies on asylum can only be described as peculiar, asymmetric, frankly quite illogical. Please consider the following two examples:*

*a. Consider first the case of a clearly bona fide refugee. Everyone agrees that with 18-20 million people currently recognized as "refugees in need of assistance," even the large number of U.S. refugee admissions can assist only a tiny percentage (less than 1 percent); more than 99 percent of the world's eligible refugees will not be offered U.S. resettlement. If one of these 18-20 million in a country of first asylum applies for refugee admission and is not admitted because he/she does not fit within the numbers and criteria agreed during the "consultation" process between the President and Congress, he/she has no right of appeal whatever.*

*Now, imagine that this very same bona fide refugee can arrange to travel so as to claim asylum at the borders, territory, airports, or even ships of the United States. Due solely to the geographical location of the claim to refugee status, nearly everything about the way we handle*



this application is different; there is a lengthy, elaborate evaluation process that can stretch out over years; negative findings can be appealed at several administrative and judicial layers; and during all of this the person is usually given a right of residence and work.

b. Now consider the second case, of a person with clearly fraudulent documents, no documents of any kind, and/or no credible claim to refugee status. If such a person applies for admission as a refugee from outside the U.S., such application will almost always be denied, with no appeal of any kind. But if the same person — with fraudulent documents, no documents, and/or no credible claim to refugee status — applies for asylum at a U.S. airport, he/she will be admitted for a lengthy stay while an extended adjudication process ensues.

2. The large numbers of asylum claims currently being processed were never contemplated by the authors of the Refugee Act of 1980.

My understanding is that the asylum issue was not of much relevance in consideration of this Act, which was intended to deal with the refugee problems surrounding Indochina. The asylum category was added as an "afterthought," with no hearings or serious debate. The purpose was to deal with small numbers of persons already in the U.S. when a political convulsion in their home country made return dangerous. The number of 5,000 to be adjusted each year was based on a hasty calculation, taking the numbers who had claimed analogous rights in the years preceding, and doubling it.

3. The asylum adjudication procedures of the United States were, for many years, distorted by Cold War criteria. The recent establishment of the new asylum system, with specially trained asylum officers, represents a major improvement in the fairness and balance of the system, and deserves broad support. Yet those of us who were critical of the old system must acknowledge that the new system has sowed the seeds of its own destruction, via rapid swamping of the system by numbers far too large for its limited capacities.

For those of us who wish to see a humane refugee and asylum policy, there are at least two possible perspectives:

1. Avoid "errors of exclusion," i.e. cases in which a bona fide refugee is excluded incorrectly and thereby put in jeopardy. Preferred mechanism: quasi-judicial process with intensive review of all individual claims, with legal counsel provided, and accompanied by substantial rights of appeal. Examples of individual miscarriages of justice can be shown as examples of errors that need to be avoided at any cost. Modelled after the U.S. judicial process of dispute resolution.

2. Avoid "errors of inclusion," i.e. the granting of extended or permanent legal residence to large numbers of mafe fide claimants, on grounds that this will discredit the asylum process and thereby exclude future bona fide claimants. Preferred mechanism: visa requirements and initial screening of all claimants for credibility by specialized examiners, allowing those with credible claims to proceed to the quasi-judicial proceedings. Initial stage a form of alternative dispute resolution by neutral experts, followed by judicial model for those screened in.



*Current policies in the U.S. and in Germany are of the first type; proposals for change before this committee are of the second type. Both types, as I see it, seek to provide a system of asylum adjudication that preserves access for bona fide claimants.*

4. The current asylum adjudication system is responsible for the otherwise-odd U.S. policy of interdicting Haitian boats on the high seas. Notwithstanding the rhetoric, both the Bush and the Clinton Administrations have embraced this system of interdiction, accompanied by screening for credible claims somewhere offshore (on cutters, in Guantanamo, within Haiti). The reason for this otherwise bizarre behavior is obvious to anyone who understands the way U.S. asylum policy works: it is a simple fact that if Haitian boats reach U.S. territory, the asylum system will be incapable of promptly returning to Haiti those who cannot qualify under the refugee definition.

*Let me emphasize that most of those who support the asylum practices that produce such an odd outcome do so out of humanitarian concern. Yet the fact is that the way this concern has been expressed in law and practice has led to a less humane policy than might otherwise be developed. In short --- the intended humanity of our current policy has rendered us inhumane.*

*[Political advocates, of all stripes, are not known for their frankness about the failures of the policies they actively promoted. For this reason, I was particularly impressed by a quote attributed to Mr. Muzaffar Chishti in the front-page story on asylum in this Sunday's New York Times. Chishtil heads the National Immigration Forum, an immigration advocacy group financially supported by the Ford Foundation. (For the record, I served for nearly two years as a member of the Forum's Board of Directors, until I realized that it had become an advocacy group.) Chishti is quoted as follows about the current U.S. asylum system:*

*"We reformed the system to address the awful practices of the past. The reforms were well intended, thoughtful, humane. But they led to a considerable amount of fraud... [In 1991, immigrants began] shopping for airports. J.F.K. was seen as particularly porous. There are asylum-seekers from all over the world there whose claims are fraudulent. So we have a mess."*

*Assuming the quotation is accurate, Mr. Chishti deserves our admiration for his willingness to acknowledge publicly that here, as in many other aspects of public policy, the perfect can be the enemy of the good.*

5. This debate about asylum also illustrates the ambivalence and confusion in American political circles about fraudulent documents. The 1986 Immigration Reform and Control Act embodied provisions that virtually invited the proliferation of fraudulent documents to circumvent employer sanctions, or even to obtain U.S. citizenship fraudulently via the infamous SAW program.

*Those on the libertarian left (e.g. ACLU) and the libertarian right (e.g. Cato Institute) agree in opposing virtually any efforts to deal effectively with document fraud. Their grounds are based on what I would call "the reasoning of the nightmare" --- that should a totalitarian government come to power in the U.S., fraud-resistant identification might represent a threat to liberty. [To quote the former ACLU executive director, about the identification systems that*

prevail in nearly all Western democracies other than the U.S.: "That's how Hitler found the Jews..."]

Yet at the same time these advocates decry America's failure to provide its poor with basic human needs (left) or to control criminal activity (right), refusing to acknowledge that both are rendered nearly impossible if fraudulent identification is rampant.

6. Finally, I wish to turn to the grave asylum situation in Europe, and especially in Germany. The sad story of the German asylum system has many lessons to teach American policymakers, if they care to listen. From the 1950s to 1974, the German government embraced a "temporary worker" program analogous to the U.S. *bracero* program. Large numbers of nationals of poor countries were admitted. Deep migration "channels" or pathways were thereby established.

The German Basic Law, or constitution, provides that the "politically persecuted shall be granted asylum." As interpreted over time by the German courts and government, this simple declaration came to mean that anyone claiming political asylum would be entitled to an elaborate administrative review process, with copious guarantees for procedural due process and repeated appeals of negative findings. Under this system, anyone applying for asylum was granted a permit to work in the high-wage German economy for many years.

This was an offer too good to refuse. When the German "temporary worker" program was terminated in 1974, hundreds of thousands of Turks and others who previously would have been guest workers decided to simply claim asylum. Between 1977 and 1980, asylum claims roughly doubled each year — 16,000 in 1977, 33,000 in 1978, 51,000 in 1979 and 108,000 in 1980.

All major political parties agreed that the asylum system was being heavily abused. But there was political stalemate as to what should be done, with the ruling Social Democrats rejecting any change in the constitution. Administrative and legal action was taken to reduce the economic incentive to asylum abuse, and for several years the numbers did decline substantially.

Like the U.S. savings and loan disaster, this quick fix had only temporary effects, with rapid growth in asylum claims reappearing and promptly exceeding the previous highs. Once again, there was political gridlock in the Bundestag, and so the numbers were allowed to grow on. By 1991 they had reached 250,000, and last year nearly doubled again, to an estimated 438,000.

[Attached are two graphs from the United Nations High Commissioner for Refugees. The first shows the evolution of asylum-seeker numbers from 1982 through 1992; the second that while numbers have been growing across Europe, most have been in Germany.]

All of you are aware of the terrible consequences of this failure by the German political system to deal pragmatically yet humanely with an obviously unsupportable asylum system. Neo-fascist political movements appeared, like ghosts from a repellent past. First at random, then with more planning, skinheads, neo-nazis and other thugs began their violent assaults on peaceful residents, selected solely because they were "foreigners." During 1992, there were some 2,000 such attacks reported. Most of us were appalled to learn that these attacks had the tacit support of very large fractions of the German population — ordinary non-xenophobic people who had concluded that their political system had failed to deal with the issue. On the positive side, it should also be noted that after several particularly vicious and fatal attacks on foreigners, millions of Germans joined in an impressive series of candlelight marches to protest the violence against foreigners.

Painfully, with mutual charges of "Nazi" and "terrorist" flying wildly in all directions, the German political system has gradually sought to find a compromise between the uncompromising

views of those who want all foreigners excluded, and those who want anyone who claims asylum to be admitted. The two major parties finally agreed in principle to amend the constitution and take other measures in such a way as to limit abuse of the asylum system. Political commentators report that the issue now is the dominant domestic issue in Germany. Parliamentary debate on implementing the new asylum compromise is scheduled to be held shortly. These measures continue to be attacked by the same politicians and human rights groups that stalemated the issue for more than a decade. In my opinion, these groups have -- for highminded motives, to be sure -- done terrible damage to the noble concept of asylum.

The parallels with the American situation should be obvious. The U.S. experience with asylum abuse lags behind that of Germany, for three reasons:

- First, the U.S. admits very large numbers of legal immigrants; Germany does not.
- Second, unlike Germany the U.S. has been unwilling to establish enforceable employer sanctions, hence unlawful residence and work in the U.S. remains readily available and the costs of abusive asylum claims therefore less necessary.
- And third, so long as Germany offers asylum on such favorable terms, it will be the preferred destination. Should the new German asylum agreement be implemented, this will surely change, with hundreds of thousands of would-be asylum abusers diverted to other destinations that offer easier terms. My expectation is that, unless their systems are changed in anticipation of such a diversion, the U.S. and Canada offer the most promising destinations. If I were in the immigration or asylum "business," I would advise clients to this effect.

#### To conclude:

In my opinion, the current asylum system is ill-configured to cope with current and prospective flows, and with the reality that large numbers of would-be migrants with no credible claim to refugee status are willing and able to exploit this humanitarian provision as a loophole.

A truly humanitarian asylum policy requires three fundamental attributes if it is to be sustainable: First, its procedures must be impeccably fair and well informed, to minimize errors of exclusion. Second, they must be expeditious and firm, so as to minimize errors of inclusion. Third, the policy must be designed in such a way as to offer no incentives for asylum claims by those already receiving protection as refugees in other countries, thereby jumping the queue of U.S. refugee resettlement policies.

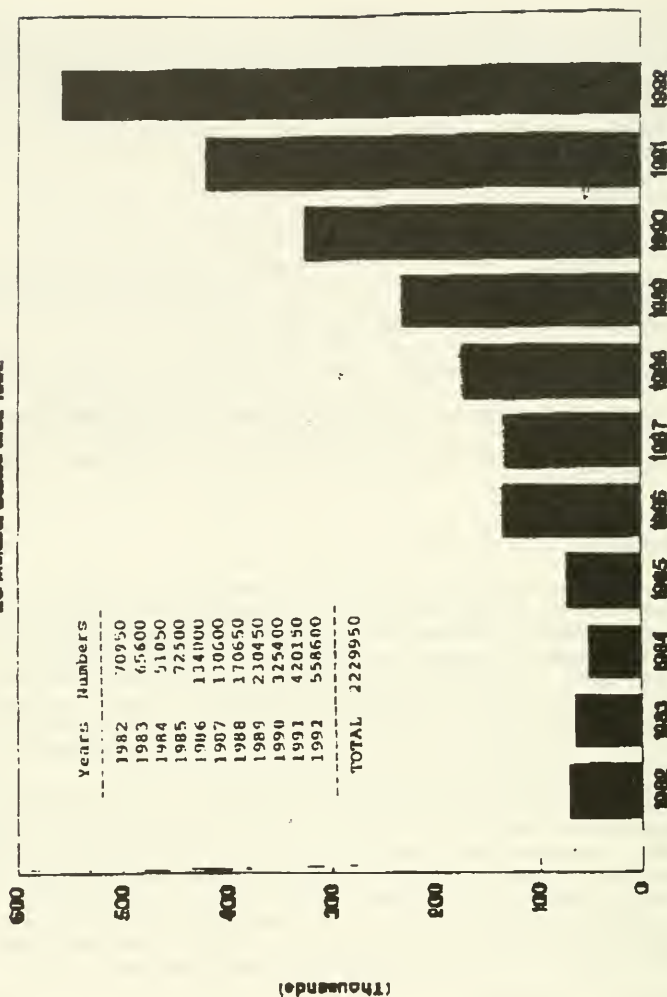
To me this means that any revised system should preserve the humane advances embraced under the recent policy of specially-trained asylum officers, but cannot continue with the extended and multi-layered review of all claims, no matter how credible or incredible. Moreover, only in exceptional cases should refugees receiving protection in other countries be admissible to the U.S. asylum system; to maximize its humanitarian goals, asylum status should be zealously preserved for those most desperate of refugees who can be protected only by admission to the U.S.

Advocates who continue to insist upon the current system of copious adjudication and appeal of incredible or unnecessary claims will bear a heavy moral burden if the humanitarian principle of asylum is discredited and destroyed by continuing flagrant abuse.

Thank you for your kind attention.

# EVOLUTION OF ASYLUM SEEKERS

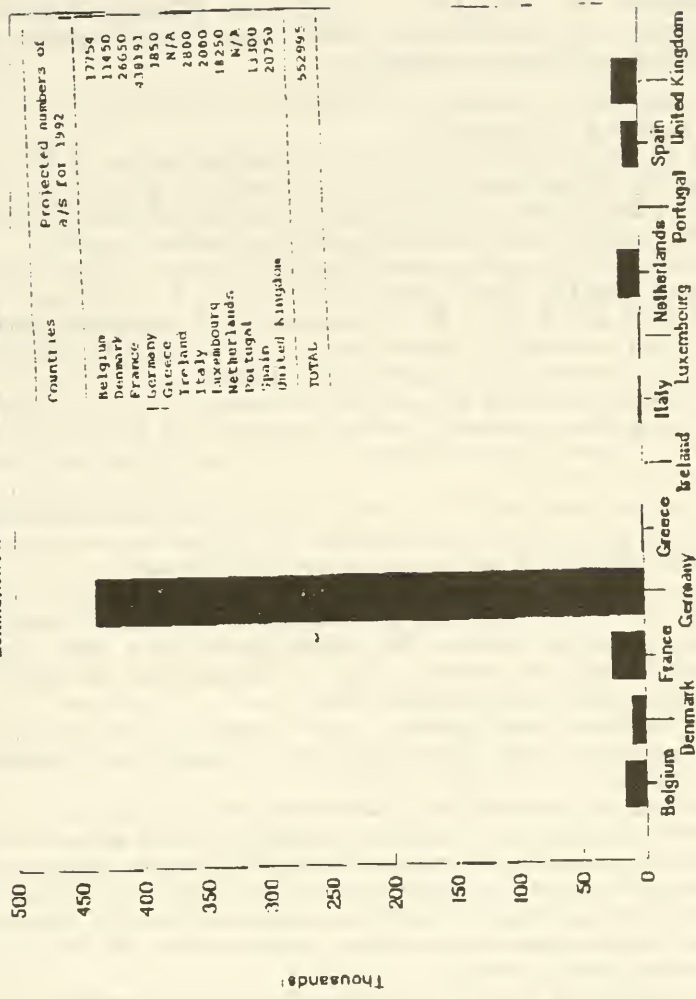
EC Member States 1982-1992



UNHCR Regional Office for the European Institutions, Brussels, January 1993

# UNHCR STATISTICS ON ASYLUM APPLICATIONS

Estimation for 1992 - EC Member States \*



\* For Germany, Belgium and The Netherlands, figures obtained directly from competent officials.

main national officer for the European Institutions, January 1993.



Mr. MAZZOLI. Mr. Lempres.

**STATEMENT OF MICHAEL T. LEMPRES, FORMER EXECUTIVE ASSOCIATE COMMISSIONER FOR OPERATIONS, IMMIGRATION AND NATURALIZATION SERVICE**

Mr. LEMPRES. I thank you, as everyone else has, for the opportunity to talk with you today.

Just by way of background, you should know that I have been dealing with these issues for the past 5 years in positions as an assistant to the Attorney General; at INS as the Head of Operations; and most recently as a Deputy Associate Attorney General.

I must applaud and support Dr. Teitelbaum in his statement that our current system is weird and illogical. I would have to add to that, it is also broken. It is time that we do something about it.

I applaud you and the others for your willingness to approach it, because it is a very difficult problem to resolve.

Everyone agrees that the goal of this system is to provide access to the bona fide applicants, while screening out those who do not deserve it. There is some dispute as to how to do that in an expeditious and fair manner.

Let me say that, like Mr. Leiden, I would approach and analyze this in two parts. One would be the current backlog in the system. It is, as I have heard today, exceeding 250,000 cases.

That is a large problem, in and of itself. It creates an endless loop, for those who seek to gain entry into the United States and you are not entitled asylum. For those people, there is an incentive to apply for asylum, anyway. That is because you can gain time, and you can gain work authorization.

That increases the backlog, which increases the incentive to apply, because it adds more time to the whole thing. You get into a loop that feeds on itself.

I think that your bill, Mr. Chairman, would begin to slow the pace at which that cycle revolves. I think that is an admirable goal.

The second category of analysis would be for those aliens that appear at our airports, without any documentation at all, or with marginal documentation, and are processed through. We do not know who these people are and, in many cases, we do not know what country they come from.

You should note the INS statistics that list the country of origin are, on occasion, guesses. INS does not know these statistics with certainty.

If someone says they are from Pakistan, for example, INS has someone at the port who will ask questions. The INS officer will take a shot as to whether that person is, indeed, from Pakistan. They are pretty good, but they are not infallible on that point.

People are then passed onto the streets, as you know. That creates a problem. They are given a date for an asylum hearing.

I would like to raise a point here that has not been directly addressed yet, I don't believe. It is very difficult to estimate how many appear or do not appear, in the end, for these hearings. It is clear that approximately 55 percent do not appear for the first hearing.

However, there is an incentive to appear at asylum hearings, if you are an applicant, all the way up to the point where there is a final order of denial.

The most accurate measurement of failure to appear would be how many appear, all the way up to that final order of deportation, and then either appear for deportation, or are deported because they are detained. I think you will find that number is minuscule.

Mr. MAZZOLI. These are, after all, very smart people. They would not be here if they weren't very smart. They show up to get the work permit, all the way through, to keep that valid and ongoing. Then they just do not show up for whatever the outcome is.

Mr. LEMPRES. That is exactly right. They show up for all of the positive benefits, and then do not show up for the negative ones. Frankly, we have created a system with those incentives, and we should acknowledge it. It is rational conduct on behalf of the people who are following those incentives.

You should know—and I know that you are familiar with the terminology at INS—that they do send people a letter telling them to appear in 3 days for deportation. That letter is known as a “run letter.” It has that effect.

Mr. MAZZOLI. It gives you a 3-day head start.

Mr. LEMPRES. It absolutely does.

Of the three proposals under discussion today, I think the one that will have the most immediate benefit is H.R. 1355, the Exclusion and Asylum Reform Amendments of 1993. This would provide for a fast and fair adjudication on the port of entry.

Again, what it does is go to the incentives of why people are appearing in the United States. There is an issue as to how wide a screen to use when the individual appears before a trained asylum officer, and everyone agrees that training is required. There is a screening done. Some are screened in, and some are returned immediately to the country from which they left.

If you are screened in, it is clear that you have to face a higher standard to establish asylum down the road. However, how wide the mesh ought to be for that initial screen is a real issue.

I would recommend the standard be higher than “frivolous” or “manifestly unfounded.” That language is used quite a bit. It is a very wide screen, and one that can be avoided quite easily.

There are several ways of passing information within the mala fide community. I will use that term, because I do not mean to be applying for legitimate asylum-seekers.

However, whether you are paying a smuggler or not, you will learn very quickly what stories work and what stories do not work. I think that word of mouth can pass, internationally, and tell people what constitutes a nonfrivolous claim.

The language in the proposal, as it appears now, is a credible fear standard, and that makes sense to me. I think that is a good standard.

The bill, as it stands, will make a difference, and will permit the other proposals ahead to do their work as well.

Looking very quickly at the Immigration Preinspection Act of 1993, I would reiterate something that former Commissioner McNary said. That is that if it is a good idea and if it is to be pur-

sued, I would recommend that you be very explicit in your direction to the Department of State that it ought to be pursued.

This is because there is, I think, a longstanding opposition, mainly because the benefits flow to Department of Justice entities, and the cost or the burden, primarily, flow to the Department of State entities.

I have one other small point on this. I know that Mr. Schumer has left; however, there is an issue as to what ought to be included in the manifest information and what is not.

Address information was used to track down the suspects in the World Trade Center bombing. That is not within the scope of what Mr. Schumer would permit on the manifest. I think an amendment ought to address that shortfall.

With regard to H.R. 1679, I think it is a very helpful bill, and a big step in the right direction. I think the imposition of time deadlines makes an awful lot of sense—7 days, 15 days, 30 days—whatever it is. It puts the burden on someone to come forward. It would impose some rationality into the system.

As it is now, an individual, again, has an incentive to come to this country, any way he or she can, and stay in the country as long as possible. It is only, if he or she is apprehended that he will then seek asylum.

That, it strikes me, is a perverse incentive. We ought to put the burden on the individual to affirmatively seek asylum at the appropriate time. You have, appropriately, an exception in there for changed circumstances in the home country.

Your proposal would also streamline the asylum process. I think that is essential to make anything work. We are not going to have integrity in the system unless some of these steps are taken out.

When it takes 2, 3, 4, or 5 years to get through the administrative process, and then you have legal appeals beyond that, it is a crazy system. It will not work unless that is addressed head-on.

The standard of persuasion mentioned in H.R. 1679 is a higher standard of persuasion than is currently in effect in the 1980 act. I think the standard is appropriately a little higher.

It is well within the discretion of Congress to set a higher standard. We have learned some lessons since 1980. I think that you have taken the right step there.

I do have some reservations about the country-specific designation procedures in the bill. It seems to me that this country took a big step forward by moving away from country-specific designations. Now, with the temporary protective status designations and this potentially new designation, it seems to me that we run a danger of getting back into a system of targeting individual countries.

Let me just conclude by saying that I think that these proposals are all a step in the right direction. They would all be helpful. However, they do not solve the problem.

For example, there will remain a backlog that is enormous—a 300,000 case backlog. That is going to have to be addressed in some manner, shape, or form. I would recommend that some process be put in place where persons in the asylum backlog reapply under the new rules.

I think that you will find that most of them have not kept current in terms of keeping addresses up. They have left the country or whatever.

I think that the number we are using of 261,000, on the way up to 300,000, is, in some ways, an inflated number. However, we do not know how inflated. All those cases are open. We ought to take some steps to go in there and see how many cases we are really talking about.

In summary, let me just say that I support all three of these proposals. I think they are all good. I think they all begin to reach the situation where we are helping bona fide applicants. That is because we are streamlining the process. A quicker adjudication removes the doubt that bona fide applicants live in.

I think that we are quite properly returning the mala fide applicants, because it is, frankly, not fair to the legal immigration system which is set up. We do have people who follow the rules. We ought to reward those who follow the rules, and not those who do not.

Thank you very much.

Mr. MAZZOLI. Thank you very much.

[The prepared statement of Mr. Lempres follows:]



PREPARED STATEMENT OF MICHAEL T. LEMPRES, FORMER EXECUTIVE ASSOCIATE COMMISSIONER FOR OPERATIONS, IMMIGRATION AND NATURALIZATION SERVICE

Summary

The current system of humanitarian entry to the U.S. is overloaded and does not meet the goals set for it. The backlog in the asylum system now approaches 250,000 cases, and it's growing each year. Aliens arrive at ports of entry with no identification at all and gain nearly immediate entry to the U.S. by claiming an intention to seek asylum. Not surprisingly, most of these putative asylum applicants fail to appear for asylum hearings. The gaping holes in the system of entry to this country threaten both the physical security of the nation and the government's ability to control the borders.

The three bills under consideration today complement each other and will help resolve some of the problems of the current system. These proposals, considered along with our generous legal immigration, refugee and temporary protected status systems, will continue to offer humanitarian protection to persons fleeing persecution.

H.R. 1355 will authorize INS officers to expeditiously exclude aliens arriving without documents or with fraudulent documents. This bill will close a gaping loophole that permits thousands of aliens entry into the U.S. with no verification of who they are or why they seek entry. The bill provides for specially trained immigration officers to screen aliens who assert asylum claims. Aliens screened in will have to meet a more rigorous standard in order to be granted asylum.

H.R. 1153, the Immigration Preinspection Act of 1993, would enhance the facilitation of travel and the national security by establishing immigration preinspection sites overseas. With some technical amendments, the bill deserves support.

The Asylum Reform Act of 1993, H.R. 1679, more thoroughly overhauls the current asylum process. The imposition of time restrictions on the filing of claims and the streamlined process established for claims of nonrefoulement will improve the integrity of the system. The bill appropriately establishes a standard of persuasion higher than the standard set by Congress in 1980. H.R. 1679 should be amended on some relatively minor points, but it deserves strong support as an attempt to strengthen our asylum process.

These three proposals work together to close some loopholes currently overwhelming the asylum system. They will not solve the problems of the current system, and leave untouched the enormous backlog of asylum claims. However, the proposals will strengthen the asylum system. With these proposals in place, persons fleeing persecution will be admitted; abusers of the system may be excluded or deterred.



Mr. Chairman and Members of the Committee:

Introduction

Thank you for permitting me the opportunity to discuss with you issues that are so important to me personally and to this nation. I am Michael Lempres, and I dealt with these issues from a number of positions within the Department of Justice over the last five years. I advised two Attorneys General on matters, including immigration issues. I also worked in INS in the position now titled the Executive Associate Commissioner for Operations, directed the Department of Justice's Office of International Affairs and served as a Deputy Associate Attorney General. Having observed the immigration system from a number of different perspectives, I am compelled to report that the current system of admission to this country is broken and needs a dramatic overhaul.

The goal of any amendments to the current system of humanitarian entry into the U.S. should be to restore integrity to the system. Persons fleeing persecution in their native land should be identified quickly and protected against return to the country of persecution. At the same time, this country must be able to reach well informed decisions about who should be admitted through the extraordinary avenue of asylum. Persons not entitled to entry should be returned to another country. The current system fails in this regard.

The three bills under consideration today represent a response to a significant threat to the security of this nation.

response to a significant threat to the security of this nation. These complementary bills are commendable and necessary adjustments to a system that is currently awash in fraud and manipulation. Simply put, reforms are necessary to restore some integrity to our system of admission to this country, and these bills represent a step in the right direction. Advocacy groups stress the protection that this country owes to persons fleeing persecution. No one speaking here today denies that this country wants to protect those legitimately fleeing persecution. In seeking to protect those deserving persons, however, this country's humanitarian good will is abused by tens of thousands of persons who use the system simply because it is a way to get into this country and to obtain work authorization.

Some statistics show the magnitude of the problem that these bills seek to address. There are currently nearly 250,000 pending asylum claims. In FY 1992, over 103,000 asylum claims were filed and fewer than 12,000 claims were decided. Given the number of administrative and legal appeals available to asylum applicants, it is not possible to estimate in what year cases filed today will be finally adjudicated. A thorough background check is not possible on most of these applicants, and the INS does not even have accurate names on many of them.

Aliens arrive at airports in the U.S. with no documents at all and are sent out to the streets hours later with no positive identification and only a promise to appear for a future asylum hearing. Not surprisingly most of these people never appear for

their hearing. Tens of thousands of people arrive in this country each year in this bizarre manner. Most of them would not be permitted to rent a video at the neighborhood video store without providing more documentation than they provided to federal authorities to be granted admission to this country.

The threat presented to this country is at least two fold. First, there is an immediate threat to the physical security of American citizens. This threat is real. At least one of the people arrested for bombing the World Trade Center entered the country by asking for asylum and not providing a single identifying document. Alien smuggling organizations use the gaping hole in the current system to overload certain ports and to enter thousands of people into this country on their basis to pay for the smuggling. The World Trade Center suspects are merely the most publicized illustration of a longstanding and continuing problem.

The second threat presented by the loopholes in the current admission system is a threat to the orderly governing of the U.S. Congress has passed a series of laws determining who shall be admitted into this country. There is virtually unlimited demand for entry into the U.S., and Congress has sought to distribute a limited number of entry slots among the unlimited demand. In this way, the country decides how many people will enter and under what conditions. People enter under assumed names, apply for asylum, and either fail to appear for a hearing or appeal the denial of asylum for years. In the end, very few asylum

applicants ever leave the country because they abscond at some stage in the process. In this way, the difficult decisions made by Congress are rendered irrelevant, and the rule of law itself is flouted.

#### Proposed Responses to the Problem

The three bills under discussion today complement each other and represent a measured response to the threat posed by our porous border. These bills will not solve the problem outlined above, but they are a step in the right direction.

These bills seek to amend a system of humanitarian entry that is part of the world's most generous system of immigration and must be considered in that context. The Immigration Act of 1990 significantly increased the number of legal immigrants to this country each year. Persons fleeing persecution can be admitted or remain in the U.S. under three different methods. Aliens can enter as refugees and can remain here either through the asylum process or under temporary protected status. This bill would adjust the asylum process, but it would not affect either the other forms of humanitarian entry or the legal immigration system.

#### H.R. 1355 - The Exclusion and Asylum Reform Amendment of 1993

H.R. 1355 represents the fundamental building block of the reforms under discussion today. It will do the most to reduce abuse of the system of humanitarian entry and to permit persons with legitimate claims to receive the protection offered under U.S. law. This bill provides for the exclusion of aliens

presenting fraudulent or false documents or failing to produce any documents in an attempt to enter this country. The bill empowers the immigration officer at the port of entry to exclude the alien without further hearing. There is an important exception for persons seeking admission on the grounds that they are fleeing persecution. These persons, even if they have attempted entry under a false or fraudulent document are provided a hearing before a specially trained immigration officer. If the applicant fails to establish a credible fear of persecution, the alien is excluded from the U.S.

The initial screening of the asylum claim by an immigration officer is crucial. The immigration officer will determine whether the would be asylum applicant is more likely than not telling the truth and whether there is a significant possibility that the alien could be persecuted if returned. This standard is lower than the standard the alien would have to establish to merit a grant of asylum and, if properly applied, would insure that aliens with substantial claims would be provided the opportunity to pursue those claims through the asylum system.

H.R. 1355 also reiterates that aliens are only deemed to have entered this country for immigration purposes when they have been inspected and admitted by an immigration officer. Moreover, the bill further streamlines the admissions process by limiting judicial review of determinations made with respect to admissions fraud and lack of documentation. This recognizes the privilege of entry to the U.S. cannot become a right for all aliens who



seek to enter. It also recognizes that persons determined not to be fleeing persecution will have sufficient other opportunities to enter the U.S. after obtaining accurate, non-fraudulent documents.

Passage of some form of expeditious exclusion is the single biggest step that Congress can take to regain control of who enters the country through our ports of entry. H.R. 1355 provides for a balanced approach to expeditious exclusion that protects both aliens fleeing persecution and the physical security of American citizens. Had H.R. 1355 been in place, Soviet defectors appearing at John F. Kennedy Airport would have been admitted; at least one of the World Trade Center bombing suspects would not.

H.R. 1153 - The Immigration Preinspection Act of 1993

Preinspection offers both facilitation and security benefits to travellers and to the U.S. As a security measure, preinspection complements expeditious exclusion at the ports of entry in this country. Preinspection is in no way a substitute for the kind of expeditious exclusion provided in H.R. 1355. Preinspection, however, deserves the strong support of Congress because of its significant security benefits as well as its facilitation features.

H.R. 1153 also would expedite immigration processing by enhancing the cooperation between INS and air carriers, by clarifying Congressional intent that no personal interview is required in the conduct of an inspection, by limiting the

information that a manifest may contain and by establishing time deadlines for inspections, among other items.

Many of these matters make good sense and will facilitate travel without significantly compromising security. The restrictions limiting information on the manifest should be amended. In the World Trade Center bombing case, suspects were tracked down in part based on address information that would not be permitted under H.R. 1153 as it currently stands.

Congress should also clarify its support of preinspection facilities to overcome structural inertia within the Administration. The benefits of preinspection flow mainly to the Department of Justice agencies, and the burdens of preinspection fall mainly on the Department of State. If preinspection is to be implemented, Congress should be more direct in defining the Department of State's role. The Attorney General cannot establish preinspection stations merely with the consultation of the Secretary of State. The Department of State must negotiate preinspection agreements and otherwise support preinspection stations overseas. The statutory language should be strengthened to compel the assistance of the Secretary of State in establishing preinspection sites after the completion of his consultative role.

#### H.R. 1679 - The Asylum Reform Act of 1993

Before reaching the specifics of the proposal, let me stress the need for this type of review of the current asylum system. It must be acknowledged that the current system is not working,

and that there are costs for this country and for asylum applicants in adhering to the old way of doing business.

The system as currently structured encourages all aliens to file an asylum claim. The incentive to file a claim, any claim, is great because the act of filing provides more time in the U.S. and work authorization. The overloaded system provides a further incentive for aliens to file claims and creates a self feeding, endless loop. The more people that file claims without regard to merit, the greater the backlog, the more time that is gained by filing a claim, and the more claims that are filed. The result is a system overcome by manipulation and abuse.

H.R. 1679 seeks to strike a balance that will permit an application for nonrefoulement to be determined on its merits. The bill would streamline the current Byzantine asylum adjudication process and require that aliens file a notice of intention to apply for nonrefoulement within seven days of entering the U.S. The bill properly provides for an exception for changed circumstances affecting eligibility for nonrefoulement. In this way the potential applicant is protected, and the system is less susceptible to manipulation. The seven day time period reasonably and generously provides a window of time for an individual fleeing persecution to notify the U.S. that he will seek nonrefoulement.

The imposition of reasonable procedural time limitations is entirely consistent with U.S. law and with international treaty obligations. Moreover, a bright line rule that places the

initiative on the shoulders of the alien seeking the exercise of discretion will reduce the manipulation and gamesmanship that abuses the current system.

H.R. 1679 provides that an applicant must establish that it is more likely than not that he would face persecution in his country of nationality in order to be granted nonrefoulement. The current process uses a different standard that Congress adopted in 1980. That standard, being created by statute, can be amended by statute. The more likely than not standard proposed here is an appropriate and generous standard that reflects hard lessons learned as this country has lurched to the currently overwhelmed process.

H.R. 1679 provides certain timelines for the scheduling of nonrefoulement hearings. It should be made explicit that these timelines provide no substantive rights to the applicants. The bill should be amended to read that the deadlines are to be met to the maximum extent practicable in order to avoid litigation.

H.R. 1679 would also permit an asylum applicant to bring his family to this country after the adjustment of status. This is consistent with the humanitarian concerns underlying the system of nonrefoulement and asylum. Streamlined procedures that would provide more control over the asylum process encourage the generous application of discretion to permit the admission of family members.

#### Conclusion

Congress deserves commendation for reviewing the process of

humanitarian admission to this country. The current asylum system is abused and represents a threat to the physical security of the U.S. Rampant abuse also undercuts the government's control of our borders and ability to implement the immigration laws.

Each of the three bills under consideration deserve support. Of these proposals, H.R. 1355, the Exclusion and Asylum Reform Amendments of 1993, offers the most immediate practical benefit to fair and generous enforcement of our immigration laws. H.R. 1153, the Immigration Preinspection Act of 1993, will help the current problem from growing worse by screening out mala fide applicants for entry before they board a plane overseas.

H.R. 1679, the Asylum Reform Act of 1993, offers the most comprehensive proposals to help repair the asylum system. The bill streamlines the current asylum process and emphasizes the nonrefoulement process. The proposed reforms would speed the adjudicatory process without backing away from this country's commitment to protect those fleeing persecution.

Each of these complementary proposals deserve support. Although certain minor amendments are required to render these bills completely consistent, each proposal addresses a different aspect of a significant problem. However, these proposals will not by themselves resolve the problems presented by the current asylum system. I urge you to go further to repair this broken system. For example, the current asylum backlog must be eliminated. You should consider requiring each pending asylum



applicant to submit a new application under the new system. Also, the problem of absconding applicants should be addressed. Failure to appear at any administrative or court hearing should result in immediate exclusion from this country. Forfeited bonds should go to a fund dedicated to locating and removing absconding applicants. The current system encourages filing of a new application if an absconder is apprehended.

I thank you for the opportunity to appear before you today and urge your support for each of the bills under consideration. They represent a good start in resolving a difficult situation, and you deserve commendation for your continued efforts to balance the important twin goals of humanitarian generosity and the integrity of our laws.

Mr. MAZZOLI. Again, let me thank this panel for really excellent testimony, and some very thought-provoking comments.

I am really not sure exactly where to begin. I might begin by just starting with Mr. Lempres, and then just sort of working my way back.

I have forgotten who it was, or maybe I heard a little comment, or maybe somebody from one of the earlier panels talked about this backlog of these cases as being illusory. I have it written down here, and I was going to ask you the question anyway, about whether the backlogs are real or imagined or, as you say, somewhat inflated.

You suggested that the people on that backlog be required to reapply in order to get where they are. However, I think that you and some of the other ones—and I believe it was Mr. Leiden—talked about concentrating on the current caseload; rather than to simply kill ourselves trying to figure out what to do with the backlog.

However, how do you see asking these people to reapply, when I think it is fair to say that many of them not only do not want to come back, but they have gone and you probably can not even reach them. You might send out a registered letter and it would come back that the person is not at the address.

How do you go about getting people to reapply?

Mr. LEMPRES. Well, they have got an obligation to keep the Immigration Service posted of their current address.

Mr. MAZZOLI. So if you sent a letter, registered mail, to the last known address that the individual has left with the INS, and that letter is returned, and then people go out, and nobody is there, then that could be, then, the basis for saying that you have lost your opportunity to obtain the benefit of asylum, or you have lost your benefits in some other fashion?

Mr. LEMPRES. Yes.

Mr. MAZZOLI. That, alone, would constitute that?

Mr. LEMPRES. Let me say this. That sounds draconian. However, they do have an obligation to keep the INS informed of where they are. I think it has been a long time since that obligation has been routinely required or followed up on by the INS.

However, that is how you lose control of a system. That is how the system is so susceptible to abuse and manipulation. If we are going to put some integrity back in the system, I think something is going to have to be done to clean up that backlog.

I heard some references of people talking about, perhaps, going to a system where we focus on the new applications that come in, and that we go to, in effect, a last in/first out system of adjudication.

I think that that is the wrong thing to do. What it does is, in effect, grant amnesty to everyone in that line. We have gone through a great deal with the amnesty in the 1986 act.

Mr. MAZZOLI. That is true. I agree with you there.

Mr. LEMPRES. I think that we can not go through either an open amnesty program or a back-door amnesty program. The burden is clearly upon, and properly ought to be upon, those people who are seeking the protection of the United States from persecution, wherever that persecution is.

Mr. MAZZOLI. Let me just sort of quickly ask you a couple of questions. Do you see any validity in the idea of setting up certain tests—one of which would be if you came here from a third country, or a country other than your country, and a country in which you are not suffering persecution—such as Mr. McCollum's bill does—does that set up of a different approach or a different process at that point?

We have heard that there is the belief that people who show up with that document, as against fraudulent documents, are really part of the international syndicate. That is because that is how they operate. They recycle those good and valid looking papers.

Do you see those, from your vantage point as a former actor in the INS, to be realistic, or do you think that is being too harsh or too severe or too uncaring?

Mr. LEMPRES. There are two different questions. I will approach them separately, if I can.

I think that the very concept of asylum is offering protection to someone who is fleeing persecution. It is not intended to provide an individual with the ability to select in which of several safe countries he or she wants to live.

I think that if you have come through, for example, London, under current law, if you have not firmly resettled, you are not returned to London. I would question that, because I think it makes good sense to return a person to a country where he is safe from persecution.

If you have successfully avoided the persecution that has caused you to leave your home country, then the burden on the United States ought to be greatly diminished.

Mr. MAZZOLI. Would you say that if you had just transited Heathrow, do you mean by that that you have to have lived in London for a few months or a few years, or something?

Mr. LEMPRES. I would say that if you have transited Heathrow, that there ought to be a burden on you to explain why you came to the United States, instead of staying in the U.K.

There is a practical matter, and maybe this ought to be something, addressed to the Department of State.

I do not know what kind of retribution that would lead to on the international arena. I know that, clearly the way the system is now, it benefits almost every other country in the world.

If we go into a system where you are returned to the country of first asylum or the country from which you transited, the benefits would flow to the United States, to the detriment of many of our European allies. I don't know how that would be accepted.

However, I think from our perspective, that is the appropriate thing to do, to go back to the country at which you were first safe.

Mr. MAZZOLI. Dr. Teitelbaum, once again, you have managed to cram a lot of history and a lot of the activities of human kind into a fairly brief statement. I really applaud you.

I was struck by a couple of things. You used the term or the phrase, at some point, "copious due process." Ms. Sale, earlier today, had used the term before you when Mr. Leiden came in. She talked about laborious and extensive due process.

I use that as a launch point for a question. You said that the current law has "laborious and extensive due process." However, that is different than due process.

I guess I would ask you the same thing: copious due process is different than due process. Is that your belief, that you can still preserve the generosity of the program, and the care of the program, under due process, without going to what makes that copious?

Mr. TEITELBAUM. Well, I think it depends on your mindset. If you believe that justice is serviced by copious due process only, then you would not accept the proposition.

If you believe that there are alternative ways to achieve justice, which are fair, informed, and neutral adjudication, in a nonadversarial, nonconfrontational kind of situation, such as, say, the French legal system pursues for much of its justice; then, that is a different model of justice from the American jurisprudential philosophy. I think that you can certainly get a just and fair outcome, without copious due process.

Mr. MAZZOLI. Well, it is interesting. I guess it is like the old story that beauty is in the eye of the beholder.

In a sense, if you look at due process from one set of eyes, and it is everything, plus the kitchen sink. Then if you look at due process from another side, it is as you have explained. It is a fair, humane, adjudication of a claim by intelligent, informed people, in a nonconfrontational, nonintimidating setting; and there is your due process.

However, that would not pass muster by those who feel that it should be, again, everything but the kitchen sink. I guess that is really where we come out.

I thought it was very well said that unless we deal pragmatically and humanely with an asylum system, which is not working or which has gone amuck, we then have corps problems—severe problems. These are problems that Germany has experienced, or problems that we have had, and you have detailed them in your many intellectual studies on demography and the process here.

I am proud that in America, we rarely give over to those attitudes, and we rarely succumb to those temptations. However, we have, in our past, done exactly what. When we are facing a situation, it is important that we deal with it pragmatically and humanely.

I guess I would suggest that you do not think that those are mutually exclusive or impossible to pull together?

Mr. TEITELBAUM. No, I don't. I think it is very important to remember this differential we make between the treatment granted to the same person, depending on where that person's feet are standing.

If we really believe in due process of the copious form, for anybody who has a claim of any kind, to be a refugee, then we should argue in favor of all of that due process, accessible to all people everywhere, who are claiming to be a refugee.

Mr. MAZZOLI. As you know, I agree with you on that peculiar—or at best, we can call it peculiar—policy toward Haiti. It is largely a product of exactly as you have described it.



Once a person has landed in the United States, whether they come in after passing the screening test in Guantanamo, or they come in because they have taken the boat through Windward Passage, that triggers a whole new set of implications, a whole new set of treatments, a whole new set of protections, new sets of counsel requirements, new sets of appeals, and new standards of proof.

That is what our colleagues were concerned about 2 years ago, when we passed our bill, which was a fairly gentle look at that setting. What the administration, apparently, has included, can not be allowed to happen, because of what happens at that point.

Therefore, I think you are exactly right. Underlying that peculiar, and some would say aberrant, policy is what happens when a person reaches the United States.

Mr. TEITELBAUM. That's right.

Mr. MAZZOLI. If we could change what happens when a person reaches the United States, to say that we can examine them carefully in the United States; then, if they do not pass much of the exam, we send them back. We do not make them paddle back, but we take them back in a correct way.

You probably have nobody arguing the point of ending the interdiction, and of closing down Guantanamo, and bringing everybody here.

Mr. TEITELBAUM. I think that is right. In addition, another advantage would be to remove the incentive that we provide to people to take very dangerous routes to claim a refugee status. It would be much better to do what we are doing now, I think—maybe not very well, but to do it better. That is, to allow such people to claim refugee status, without getting in an unstable boat.

Mr. MAZZOLI. I did read your statement last night, and intend to reread it again.

However, you say in two different ways that our intended humane policy has rendered, "weird," as well as "inhumane," our ultimate asylum policy.

I think, in the same way, you said, for high-minded reasons, that asking for purity and copiousness has done terrible damage to the overall immigration system.

So I think that what we have to do is to be pragmatic and humane at the time. I think our committee certainly is going to endeavor to do that.

Mr. Stein, you said almost the same thing as Dr. Teitelbaum, that in a sense there is an advantage given to someone who starts here with the process, rather than one who starts it abroad. You make several recommendations, which I appreciate, and some of which deal with the bill that I have introduced, that would try to improve the thing.

However, let me ask you this. I think you agreed with Mr. McNary in saying that detention alone would not solve the problem. You have to go beyond that.

Do you think money, alone, would solve the problem, here? There are people—and I believe Ms. Massimino is one of them and Mr. Rubin was another—who feel that if you take the current existing programs that we have on the books, starting in 1990, and add the right number of people, and train them correctly, and put the right amount of money into the system, then you don't really need my



bill, Mr. McCollum's bill, or Mr. Schumer's bill. You don't need anything.

Mr. STEIN. Again, I think that it is unrealistic, given the potential migration pressure on this country's borders in the next 15 to 20 to 30 years—the growth of the international labor force—people with everything to gain and nothing to lose, wanting to move to a country like the United States.

I went back and looked at some old testimony. I remember, back in 1980, we assumed that asylum was primarily designed for people who had entered this country, legally, as either a non-immigrant, or student, or whatever.

Then, through things that we could never have foreseen—circumstances changed because of a coup or revolution, they couldn't go home. They would ask for asylum. The exception to that was the cold war refugee, the ballerina, or what have you.

Then through the 1980's, this battle went on with the demise of the cold war, where there were the groups that wanted to see the right wing dictators who were the leading edge against communism. Their refugees get the same treatment as refugees from Communist countries—this rubberstamping process.

These people who are now caught in this backlog that Robert Rubin was talking about are really the residuals from this battle. With the end of the cold war being fought in this legislation, the issue is, how do we now establish a new asylum policy which will treat people no better if they come to this country, first, to make their claim, than if they were to do it from outside the country?

That is the great challenge. Unless you solve that dilemma, or unless you don't make the United States an unattractive target, if you will, to land to make your claim, then, as I think Michael says, you are never going to rationalize the process. We are always going to increase the numbers, and the workload.

Mr. MAZZOLI. Well, maybe Mr. Leiden, you, and Ms. Massimino can help me here a little bit, too. There is always the term ambivalent, which creeps into our discussion.

We, as a people, are ambivalent, because just as you point out those really heart-rending stories, and then we mentioned earlier that members of our committee either have parents or grandparents who, themselves, came here, some seeking asylum, and some just trying to have a better life, as my father.

However, the fact of the matter is there is a kind of ambivalence. That is because we know that this type of person has done great things for America. Also, we know that our Nation is the better for it. It is more talented and the more vibrant, as a result of this.

So, that is one aspect of it. Then the other side says, "Yes, but we just cannot take in everybody. There are millions upon millions of people who would like to come here. We can not possibly accommodate them through the system. The system is a shambles. It is being abused."

Therefore, the other side of that is that we have got to take some steps. We don't want to take steps that would keep out these good people. We know them, we live with them, and we are part of a family.

However, on the other hand, we know that we should not let everyone in, just because they want to come here. That is because

there are millions of people who do. Many of them are waiting, legally, and patiently to get their number to pop up.

The more we let in, the more we are going to shut down legal immigration, or as Father Hesburgh used to say, "Unless we shut the back door through which people enter illegally, we are not going to be able to keep the front door open, through which people do enter legally, as immigrants or refugees."

Let me ask you this. Do you think that we can do nothing and just hope for a generous fund of money to come from the administration?

Mr. LEIDEN. No, that is not my solution. I think that reform has to be made—and if I was not clear, let me just say this. I think changes have to be made.

Mr. MAZZOLI. I am making this thing a little more stark, just to see where we are.

Mr. LEIDEN. Changes can be made, so that we can have a system that works, that eliminates overburdening the process, and reduces applications without sacrificing due process.

I am a believer in that. We want to do U.S. asylum processing in an American way. We do have a legal tradition that, we are proud of. Just because they do it some way differently in Romania or somewhere else, and they think that is OK there, that does not make it all right here.

I not saying that there should not be changes. I think there should. In my testimony, I said that we should streamline, we should be more efficient, and that we should change the priorities and the resource allocations.

I am concerned, for instance, with the use of detention where people who are released from custody are just kind of set out with a waive goodbye and told, "Come back in 2 years for your hearing."

We have suggested in our testimony, and we have already spoken with the new Justice Department, about some kind of periodic contact or other kind of system that would keep the pending applicant in contact.

Mr. MAZZOLI. It would be very important.

Mr. LEIDEN. I think that a system can be developed or improved, if you will, under the current law, that will work, that will deliver prompt adjudications, that will be accurate, that will be fair, that will be efficient, and that will reward protection to deserving people.

Mr. MAZZOLI. So under existing law, you would see all this happening, without any additional changes in the law?

Mr. LEIDEN. Well, as I said, I think there are aspects of the preinspection bill that I think make sense, I think, with some safeguards. I think that I can see a statutory change that would insist on expedited examinations and accelerated hearings at the airports, for arriving people in the class that Mr. McCollum's bill addresses.

Mr. MAZZOLI. For example, I would like to ask you the same question, Ms. Massimino. If those are handled by adjudicators that are trained in the subject, and I do not think anyone challenged what has happened since 1991; that is, these people have made a good faith effort. These INS officers have become quite expert, and I think most of the lawyers agree.

This is not just some kind of a bum's rush and a quick shuffle, and out they go on their ear. These are caring, sensitive people who are doing this, even for someone who has no documents or someone, like as you mentioned, with the one lady who comes in here, all physically and emotionally distraught.

Can we not do something like Bill is talking about, given the fact that we also have the "60 Minutes" pieces or Tom Brokaw's pieces? If you can't, even within the field, say, "My gracious, that is not right,"—

Mr. LEIDEN. As I said in our written testimony, I think that there is a measure, a statute that might be appropriate that would, very quickly, expedite the examination and the removal of frivolous cases of abusers of the system, precisely at the airports.

Therefore, I agree with that approach. I am not saying, "No change; everything is fine." I agree with the approach of change, but we have to be careful how we do it. I can conceive of, and I think I have detailed this at length in my testimony, a new approach that would provide protection, and provide that important deterrence to people who abuse it.

Mr. MAZZOLI. Well, getting back to what one of the earlier witnesses said—and it might have been Mr. McNary—that these bills appear to be complementary. They do not appear to be necessarily intrusive, one on the other.

Chuck's bill, basically, in essence, is to try to keep people out before they try to come in, if they do not have some right to come in, or if they are trying to perform some scam on us.

Bill's bill says that if they happen to go through Chuck's arrangement and wind up in the United States, then for those that are egregious and blatant cases of trying to put one over on the country, they get a quick but fair treatment, or a humane treatment but fair and expedited treatment.

Then they go back some place; using as elements, do they come from a country in which they were not persecuted? Is it something when they do not have documents at all, because that fits part of the profile of those people who recycle those papers?

Then there is my bill, which says that if you get in the country, legally, and like, I think the 1980 act originally contemplated, people who were here legally, but because of a change in conditions in their country, they had to apply for some relief from going back—and that is still the case in some cases. People come in legally, as visitors or workers or something, and something happens.

However, in those cases, we just do not give everybody infinite bites at that asylum apple and give them contemporaneous appeals or simultaneous appeals or appeals through the administrative action or appeals into the court system. That is because the end of it is, it just really makes our system ridiculous.

Ms. Massimino, maybe you can help me a little bit in trying to do right by the good cases, like you have described, and then putting down some pretty heavy barriers for those people who try to take advantage of the system.

Ms. MASSIMINO. Well, I think we all agree that we have a problem. The problem is hurting genuine refugees. We want to take care of the problem, from my perspective, in part to help those people. We do not want those people to have to wait 5, 6, or 10 years



in order to bring their family members over, when they have manifestly founded claims.

I did not want to give the impression that we think that if you just throw enough money at this system that that will fix every problem. I do not think that will fix every problem.

It is obviously an underfunded system. I think most of us here agree with that. Therefore, that needs to be addressed. We are anxious to work with you and others to come up with creative ideas as to how that can be addressed.

However, as we have said in our written testimony, I think there are elements of all three of the bills that could form a solution to this puzzle that we are working on, and these kind of conflicting impulses that we have.

In our written testimony, we suggest some very specific additions of some process that I think would not reach the level of "copious" due process, but would protect the rights of people who are legitimate refugees and are arriving here, as I explained, confused and somewhat bewildered, so that we can guide them through that process.

Mr. MAZZOLI. Yes.

Ms. MASSIMINO. The UNHCR has been very helpful in providing guidance on what those procedures should be; especially, the executive committee. I rely a lot on this book, which I think is very helpful.

[Book displayed.]

Ms. MASSIMINO. The executive committee of UNHCR, of which the United States is a member, has basically recognized this problem. We do not have to be "chumps" to be fair to refugees.

There are countries that suffer serious burdens as we are right now, from manifestly unfounded asylum claims. The executive committee recognized that there needs to be a way for countries to address that problem. Following up on that it suggests what the parameters are to the procedural safeguards for refugees in which such a system could be constructed.

Mr. MAZZOLI. I have had the honor of chairing a number of hearings over the years, going back to when I first met Dr. Teitelbaum and, I guess, Warren, back in those early days.

However, I am not sure that we have ever had a day quite as good as today. I think that was starting from panel I, right through your panel. You really had some very provocative, interesting, and imaginative approaches, including the philosophy of why we are here, and the sort of pragmatic approach as well.

I really salute all of you. I, on behalf of my colleagues, want to thank all of you, and particularly, the last panel, because you have been here, virtually, all day long. If you need an excuse for the teacher, I'll write you one out.

[Laughter.]

Mr. MAZZOLI. Also, I want to say again, that we may have further followups in writing and questions and so forth.

Let me also ask, if any of you come across anything which is manageable in length for me to read, because I read a lot on the airplanes, and so forth, I would be very happy to have it.

That is because I would certainly look at it and value it. This is the first of a series of formal and informal meetings and discus-

sions, and cups of coffee that my friends and I will have off the floor, just to kind of see where we are, and what we can craft and come up with.

I do not want to go beyond this and be too much of a Polly Anna here, because this is a vexing, very prickly subject, in every way. It is philosophical, it is political, it is economic, it is historical, it is tradition, and it is everything. I do not want to minimize the problem.

However, I think we may be at a point now where we have people of disparate views and highly careful and thoughtful people of a view that something needs to be done. It can be a variety of things, including strengthening the current system, improving it, going to changes statutorily, or changes administratively.

However, I think if we do not take advantage of this and seize this opportunity to do something that all of us want to do, which—again, to borrow Michael's words—are pragmatic and humane at the same time, then we may forfeit the opportunity of doing anything carefully or anything thoughtfully or anything with nuances or subtleties.

That is because then we are going to be forced to one side of this dial or the other side of the dial. Neither, it seems to me, holds what we need for the future.

Therefore, you have been extremely helpful to me and, I think, my colleagues. I want to thank you for it.

Having said that, the subcommittee stands adjourned.

[Whereupon, at 2:20 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]



# APPENDIXES

## APPENDIX 1.—NEWS ARTICLES

THE NEW YORK TIMES METRO WEDNESDAY MARCH 12, 1992

### A Flood of Illegal Aliens Enters U.S. Via Kennedy

#### Requesting Political Asylum Is Usual Ploy

By DONATELLA LORCH

Taking advantage of bureaucratic paralysis, hundreds of illegal immigrants are entering the country through Kennedy International Airport every week, even after it is determined that they lack the proper documents.

In the last six months, Kennedy, more than any other airport in the country, has been flooded by travelers with forged papers, tampered passports or no passports at all who board off their planes and ask for political asylum. They may be illegal, but most of them simply vanish into the immigrant world.

By law, these travelers cannot be sent back without a hearing. But with so many, the system is overwhelmed.

#### More than two-thirds of the immigrants do not show up for hearings.

A court backlog of more than 14 months and with only 190 beds in detention centers, most of them are allocated into the country and many remain in the New York area. Ultimately, more than two-thirds do not show up for their hearings.

#### An Open Border

Immigration officials say the airport has become an open border to the United States, the most easily entered in the country.

"The word has gone out," said one source, "that it is a direct line of immigration for New York City's airports and seaports. It is easy to come through here. The people just basically laugh at the inspectors. They're going to tell us when they are going to immigrate."

When Ashraf Hussain walked off Atlanta Flight 500 from Milan the other day, he used the only two words of English he knew: "Political asylum." Mr. Hussain said to an immigration officer checking passports at the door of the plane

He held out a Pakistani passport lacking the required visa and, when questioned, shook his head and said he spoke only Urdu. Without a trace of surprise, the immigration officer turned him over to another officer. After asked him a few questions in Urdu, ordered him to appear at a hearing before an immigration judge, then let him into the country.

Like children wanting a dream to come true, the men and women sweating questioning in the detention center stubbornly to their stories and what is in their quest.

"I have only \$350 with me," said Afzal Hussain, another Pakistani who arrived on an Egypt Air flight from Cairo and who said he had been beaten by Pakistani troops. I don't mind getting beaten here, I'll do any job there is. Here I am happy."

#### 20,000 a Day

These immigrants are but a small fraction of the estimated 20,000 passengers a day coming through Kennedy. On the day Ashraf Hussain arrived, 48 people came without proper documents and more than 150 arrived for the first time with their permanent residency documents.

But in January, a record 1,288 illegal immigrants were caught coming through Kennedy, almost double the amount of six months ago. Ms. Sonchik estimated that the numbers could reach 15,000 by the end of the year, an increase of 9,000 since 1990. Since 1987, the number of people caught entering the country without proper documents has more than doubled reaching 43,400 in fiscal 1990, immigration officials said.

They arrive at Kennedy on a spectrum of airlines from places as far flung as Brazil, Nigeria, Russia and Britain. Some come via professional smuggling organizations and others buy documents. Often lawyers for immigrants will call the Immigration and Naturalization Service even before the flights land, Ms. Sonchik said.

#### An Increase Last Fall

Last fall, there was a marked increase of illegal arrivals at Kennedy soon after Los Angeles International Airport opened a new detention center with 600 beds. In Miami, the Immigration and Naturalization Service

has a large center also acts as a deterrent. On the smuggling route, Kennedy, which receives 12 percent of the nation's transatlantic traffic, has become the odds-on favorite.

The question of fraudulent immigration is politically sensitive. Recently, the Bush Administration began considering a plan to curtail sharply the rights of foreigners seeking political asylum by allowing immigration authorities to forbid entry to those with fraudulent documents. There have also been proposals to expand a program that places immigration officers abroad for pre-inspection purposes.

#### Airlines Feel Victimized

The issue has also become a bone of contention between the immigration service and the airlines. The airlines, responsible for insuring that arriving passengers have proper documentation, say they feel victimized and unfairly fined by immigration authorities.

Last year, airlines paid \$21 million in fines, said Richard Norton, senior director of the Air Transport Association of America, which represents the airlines. The fines are \$3,000 a person if passengers arrive without documents, and airlines are liable for all detention costs of any transit passengers who ask for political asylum.

#### Same Stories, Word for Word

Airlines insist they cannot be responsible for passengers who destroy their documents during the flight or hand them off to smuggling couriers. In January, the Air Transport Association filed a lawsuit against the Immigration and Naturalization Service over the agreement under which the airlines may be fined.

"We're just taking the tip of the iceberg and it's moving fast," Mr. Norton said. The I.N.S. is not going to solve this by sitting back and fining the airlines.

The stories "the same immigrants tell" are "the same" officers are often repeated word for word. Ashraf Hussain, a small man in jeans and a gray leather jacket, admitted a witness statement to destroying his entry documents while on the flight to New York. His only baggage was a black leather attache case that contained no documents.

When questioned that evening, he said he was a member of the opposition Pakistani People's Party and had been jailed by the present Government and risked death if he returned.

"I know the answers by heart," said an immigration officer as he questioned a Pakistani on Flight 110. I could arrest that man any time.

There were "questions" and Mr. Hussain said he was a Pakistani but "I will go back only when there is peace" in Pakistan, he insisted. He added that he knew no one in New York.

Next to him was Paria Singh, 24 years old and Indian. He arrived on the flight from India. He claimed to be an Indian passport, but the picture showed was of another man. Mr. Singh said he knew the man in the picture because he had seen him in the Indian police station.

"I am a Pakistani," he said. "The police said I have a letter to the immigrants. I paid \$5,000 for the passport from a man called Bajinder Singh in July, 1991. If I go back I will be killed by the militants of the Indian police."

Several hours after his flight had landed, when the questions were finished, Ashraf Hussain signed a document and asked to be released. He sat alone in a room, oblivious to the hugs and excitement around him, then drifted into the crowd.

# THE WALL STREET JOURNAL.

## Illegal Alien Cited in Killings Outside CIA

By JOHN J. FIALKA

**Staff Reporter of THE WALL STREET JOURNAL**  
WASHINGTON—Mir Aimal Kansi, who is being sought in the killing of two Central Intelligence Agency employees outside the agency's headquarters, was one of more than 1,600 Pakistanis who enter the U.S. illegally each year.

The government has no record of when Mr. Kansi entered the U.S., according to a State Department official, who asked not to be identified. The official said that the use of counterfeit or altered documents is so widespread and lucrative in Pakistan that it has attracted criminals and terrorist groups.

The official acknowledged that the U.S. Embassy in Karachi discovered a year ago that some members of a terrorist group, the Muhajir Quami Movement, had been issued tourist visas to the U.S. According to reports in Pakistani newspapers at the time, the group used the documents to get rid of some of its more unstable members by sending them on one-way trips to the U.S. "At the time they were issued," the official added, "there was no way to tell the people were part of a terrorist group."

U.S. law enforcement officials, however, haven't linked Mr. Kansi, 28 years old, to any organized group.

Pakistanis are the second-largest group entering the U.S. with phony documents, after the Chinese, according to the State Department official. Generally, when Pakistanis arrive illegally in the U.S., they are given temporary work permits and allowed to remain while the U.S. Immigration and Naturalization Service sorts through their cases.

Duke Austin, a spokesman for the INS, said Mr. Kansi was one of 250,000 immigrants with pending applications for political asylum. At the time of the Jan. 25 shooting, his case had been pending for more than a year, and no hearing had been scheduled.

According to wire service reports from Quetta, Pakistan, Mr. Kansi's hometown, he briefly visited his family there last week. He has since disappeared. Yesterday, Pakistan's government announced that it was joining the U.S. in the hunt for him. Mr. Kansi is said to be the son of a wealthy building contractor and has a master's degree in English literature from a university in Pakistan.

Before the shooting, in which a lone gunman fired an AK-47 at workers arriving at the main gate outside the CIA's headquarters in Langley, Va., Mr. Kansi had been working as a courier for Excel Courier Inc., a Herndon, Va., company that is owned by Christian Marchetti. Mr. Marchetti's father, Victor Marchetti, is a former CIA official who resigned in the 1970s to write "The Cult of Intelligence," a scathing attack on the CIA's alleged overseas political manipulations and corruption.

Christian Marchetti said that there was no contact between Mr. Kansi and Victor Marchetti, who has an office at Excel, and that Mr. Kansi made no deliveries to the CIA. Mr. Kansi was "a very articulate, very intelligent, very nice guy," he said. "We're shocked to find out how he could be involved in something like this."

Mr. Austin said the U.S. first learned of Mr. Kansi's presence in the country when the INS received a letter dated Feb. 2, 1992, asking for political asylum. The letter said that he had entered the U.S. at Kennedy Airport in New York on March 3, 1991. But Mr. Austin said that "there is no record of his entry into this country."

The State Department official said that it is possible that Mr. Kansi used an altered passport to enter the U.S. under another name. In Karachi, such passports and the visas that must accompany them are sold, and the picture of the buyer is substituted for the original photo. "Once the buyer enters the country, the passport is mailed back to Karachi and used by somebody else," he said.

Under U.S. law, a person applying for political asylum must provide evidence of a "well-founded fear of prosecution" in his or her home country. Mr. Austin said the INS couldn't release Mr. Kansi's letter because it is considered confidential.

Date 2/12/95

THE WALL STREET  
JOURNAL



DATE: 3-5-93

## The Washington Times

PAGE: A10

COLUMN:

# Cleric in probe defied INS ban

By Michael Hedges  
THE WASHINGTON TIMES

Sheik Omar Abdel Rahman, a Muslim fundamentalist leader being investigated in the World Trade Center bombing probe, was living in New Jersey despite being "denied admission" to the United States by immigration officials in 1992.

Under federal law, those denied admission are allowed to enter the country until a hearing can be held before an immigration judge. That hearing was held in January, but a judge's ruling was still pending.

Sheik Abdel-Rahman had been on a State Department list of those associated with terrorist groups as far back as 1990 and should never have been allowed in the United States, according to a 1990 report in the New York Times.

His ability to stay in the United States despite his widely reported links to terrorist groups — and the Immigration and Naturalization Service decision to deny him admission in 1992 — points up weaknesses in U.S. immigration laws also exposed by the recent case of suspected CIA killer Mir Aimal Kansi, experts said.

"Alien smuggling" through New York's John F. Kennedy International Airport "has passed the crisis level, with hundreds of aliens with bogus documents or no documents at all arriving and claiming 'asylum,'" INS District Director Benedict Ferro wrote in Rome earlier this month.

Mr. Ferro's cable was first reported in The Washington Times on Saturday.

"A disturbingly high percentage of people arriving by air with no legitimate documentation are people from areas where there is a terrorist environment," said one INS official.

"The chances of

the U.S. right now are nearly zero."

Sheik Abdel-Rahman had slipped into the United States in May 1990 from Khartoum, Sudan, on a tourist's visa despite being on a list of people

with ties to terrorist groups, according to the New York Times. That story quoted a State Department spokesman saying immigration officials made a "mistake."

But INS officials yesterday denied that a mistake had been made, saying it was not clear Sheik Abdel-Rahman was on a list of those linked to terrorism. "That has not been resolved yet," said an INS official.

In any case, in April 1991, Sheik Abdel-Rahman applied for, and received, immigrant status on the basis of being a religious leader. But in July 1991, immigration officials revoked his green card after charging him with misrepresenting himself on his visa application and "crimes of moral turpitude."

Those "crimes" included polyg-

amy — and he was in Egypt with ties to the U.S. State Department's list of those associated with terrorist groups as far back as 1990 and should never have been allowed in the United States, according to a 1990 report in the New York Times.

He later left the United States and returned to Egypt.

When he returned to the United States on March 6, 1992, he was denied admission and his immigrant status was revoked. According to INS spokesman Duke Austin, he

But under U.S. immigration procedures, being denied admission does not mean someone is turned back at the border.

Mr. Austin said Sheik Abdel-Rahman was placed on "exclusion status," meaning the government was moving to have him sent out of the United States. He was allowed to enter the country until a hearing could be held and a decision made by

an immigration judge.

Last year, about 5,000 persons arrived at JFK with either no documents at all or fraudulent documents. Most immediately request political asylum.

Under present law that means they cannot be removed from the country until given a hearing — under present backlogs, in 14 to 18 months, officials said.

"In many cases, including that of Kansi, the claims are pathetically transparent," said an INS official. "He had no real grounds to claim

least a year to schedule a hearing."

In the Kansi case, he had been in the United States eleven months before the CIA headquarters shootings — he is alleged to have committed



DATE: 3-8-93

## Los Angeles Times

PAGE: A1

# Temporary Visas Used to Stay in U.S. Indefinitely

■ **Borders:** Recent terrorist incidents point up looseness in immigration laws. Congress may make changes.

By DAVID G. SAVAGE  
TIMES STAFF WRITER

WASHINGTON—The World Trade Center bombing and the recent shooting outside the CIA point up a surprising laxity in U.S. immigration laws that permit foreigners to enter this country on a temporary visa and to stay indefinitely—with virtually no chance of getting caught.

Officials of both the Immigration and Naturalization Service and the State Department readily admit that they have no idea how many people fail to depart as promised. Even if they knew that a foreigner had overstayed his visa, they say that they have no way to find him.

American embassy officials interview foreigners, ask why they want to come to the United States and issue visas to those who are likely to leave as promised. But those records are destroyed after one year, department officials say.

The INS issues an entry card to visa-holders once they arrive here, but its agents do not keep information that would permit them to track down a missing foreigner.

"You are talking about a huge number of people" who come here with a temporary visa, said INS spokesman Duke Austin. "There is no system to track them. We wouldn't even know where to start looking for them."

In 1991, Austin said, 293 million people came this country on some sort of entry permit.

Until now, no one paid much attention to this virtually unregulated system of legal immigration.

But the recent highly publicized crimes at the Trade Center and the CIA have prompted some talk of change on Capitol Hill.

"Our borders are much too porous," Rep. Charles E. Schumer (D-N.Y.) said Sunday on CBS' "Face the Nation." "We want to keep them open, but we also have

to be much more careful."

The prime suspect in the World Trade Center bombing, Mohammed A. Salameh, entered the United States in 1988 with a visitors visa issued at the American Embassy in Amman, Jordan. The 20-year-old Palestinian who has a Jordanian passport said he wanted to come here for one year to study, but he never returned home. That fact became clear to U.S. officials only after he was arrested in connection with the bombing.

Last month, officials had a similarly unpleasant surprise when investigating the murders of two CIA employees as they sat in their cars outside the agency's headquarters in a Virginia suburb outside Washington.

They learned that the prime suspect in that case, Mir Aimal Kansi, had entered this country in December, 1990, with a visa issued at the American Embassy in Karachi, Pakistan. He said he was coming here on business and would leave within one year.

But Kansi failed to depart and instead applied for asylum, a slow and cumbersome process that takes years, even to set up a hearing.

With his asylum application and a work permit, Kansi was able to get a Virginia driver's license and to purchase an AK-47 assault rifle that allegedly was used in the Jan. 25 murders.

Once he became a suspect in the case, Kansi simply fled back to Pakistan.

Kansi's case shows how the asylum laws can be abused.

"Right now, if you get on an airplane [to the United States] and claim asylum . . . when you arrive at Kennedy Airport in New York, they will say to you, 'OK, we'll give you a hearing on whether you deserve asylum. Show up in a year.' And two-thirds of the people never show up," said Schumer, who chairs the House subcommittee

on criminal justice.

Immigration lawyers say it is well understood that foreigners who can obtain a temporary visa have no trouble staying here indefinitely.

"There is no automation to their records [at the INS], so there are literally thousands coming all the time who just stay," said David Carliner, a prominent immigration lawyer in Washington. "It's not always easy to get a visa, but once you get here, they don't have any

way of tracking you."

Foreigners arriving with a visa are asked to supply an address, he said. But that information—which is not checked—may be nothing more than the name of a hotel.

When leaving, they are supposed to drop off a departure card, but that is not required. Based on this information, INS officials try to estimate departure rates for various countries.

This data is used to set criteria for admitting foreigners. For example, it is harder to get a visa from Haiti or Pakistan, whose citizens are deemed less likely to return home, than from Germany or Britain, immigration lawyers say.

Embassy officials also are more likely to give a visa to a 40-year-old with a house, a family and a job in his native country than to a young, unmarried person.

The State Department has been asked why Salameh and Kansi, two young, unattached men from poor nations, were given visas to come here, but its officials have been unable to supply the answers.

"The visa applications are destroyed after a year, so we don't have any information on them," said Joseph Snyder, a State Department spokesman. "We certainly don't keep track of people once they get here."

"We have a great deal of trust in our system," said Austin of the INS, so some foreigners can abuse the system. "But that's the price of an open society," he said.



## FBI Official Thinks New York Bombing Was the Work of Large Terrorist Group

By JOHN J. FIALKA

*Staff Reporter of THE WALL STREET JOURNAL*  
WASHINGTON — A top Federal Bureau of Investigation official said investigators have a "gut feeling" that the bombing of the World Trade Center in New York was "organized by a large, well-known terrorist group."

James Fox, the highest-ranking FBI official involved in the investigation, told a House Judiciary subcommittee that the Feb. 26 bombing bore the mark of professionals. But he didn't name a specific group.

After his remarks, Mr. Fox appeared to be scolded by his boss, FBI Director William Sessions, who told the House panel "we just should not speculate" on the investigation.

Mr. Sessions said that the possibility of the bombing is part of a "new wave" of terrorism was "speculation at best." He noted that the number of terrorist incidents in the U.S. has declined steadily, from 51 in 1952 to just two in 1992.

Outside experts on terrorism who also appeared before the committee said that the group involved in the bombing probably was based outside the U.S., most likely in the Middle East.

"With this bombing, a taboo has been broken," said Brian M. Jenkins, senior managing director for Kroll Associates, a large private investigation firm. Mr. Jenkins, a former analyst on terrorist incidents for the Rand Corp., said that during the 1980s there appeared to be an unwritten law among Middle East terrorist groups not to stage incidents in the U.S. That reflected partly the difficulty and long distances involved, and partly the fact that there are plenty of U.S. targets in Europe and the Middle East, he said.

Stephen Higgins, director of the Bureau of Alcohol, Tobacco and Firearms, testified

that it wouldn't have been difficult for a terrorist group to buy explosives in the U.S. "You can buy dynamite in many states as easily as you can buy a gun," he said.

The chairman of the panel, Rep. Charles Schumer (D., N.Y.), proposed tightening laws governing the sale of the explosives and requiring explosives manufacturers who sell products in the U.S. to include "taggants," microscopic chemicals that can be traced quickly and easily to a given batch by a given manufacturer.

But according to ATF statistics, curbing the clandestine use of explosives wouldn't be easy because the theft of high explosives from mining and construction sites, where most of them are used, is common. Between 1987 and 1991, there were more than 90,000 reports of explosives thefts.

While dynamite is the most well-known explosive, an FBI bomb expert indicated earlier that the blast bore the marks of a more stable, modern type of commercial explosive made from ammonium nitrate and either a gel, slurry or emulsion of water.

In a telephone interview, Fred Smith, president of the Washington-based Institute of Makers of Explosives, said that four billion pounds of explosives are consumed in the U.S. each year, most of it in mining, quarrying and domestic construction. In the last 30 years, he said, ammonium nitrate explosives have taken over the largest share of this market because they are more stable and easier to work with.

The House hearing and Rep. Schumer's proposed legislation also focused on ways Congress could tighten the large flow of illegal immigrants to the U.S. One of the suspects in the bombing case, Mohammed Salameh, a 25-year-old Jordanian, used a tourist visa to enter the U.S. six years ago and remained after it expired.

Investigators are looking at the ties between Mr. Salameh, another suspect and Sheikh Omar Abdel-Rahman, a militant Muslim fundamentalist preacher. The sheik was on a U.S. terrorist list when he was given a tourist visa to visit the U.S. in 1990 by the U.S. Embassy in Khartoum, Sudan.

Ambassador Thomas E. McNamara, the State Department's coordinator for counterterrorism, explained at the House hearing that Sheikh Omar was on the list because he was accused of involvement in the assassination of Egyptian leader Anwar Sadat. The State Department, he said, revoked the visa in November 1990.

But the sheik, an Egyptian, remained in the U.S., moving from Brooklyn, N.Y., to New Jersey, where he applied for and received permanent-resident status in April 1991 under a slightly different spelling of his name. This status was revoked in March 1992, when the State Department caught up with him again. Since then, according to Mr. McNamara, the sheik continues to fight deportation by claiming political asylum.

"There are mistakes made and this is one of them," Mr. McNamara testified. He said the U.S. Immigration and Naturalization Service, which deals with such cases, "is overloaded."

Rep. Schumer's bill would establish "pre-inspection stations" at international airports to keep people from routinely entering the country illegally. Mir Alim Kansi, the 28-year-old Pakistani accused of shooting two CIA employees in January, also entered the U.S. illegally and later prolonged his stay by applying for resident status.

Another witness at the hearing, Stanley Breznoff, executive director of the Port Authority of New York and New Jersey, which owns the World Trade Center, suggested that one way to prevent car bombings may be to ban indoor parking in major buildings such as his. "Six months ago, I would have said no," he said, "but everything is on the table now."

Meanwhile, restoration efforts continued at the center, where its director, Charles Malikish, said April 1 remained the likely target move-in date.

Engineering and salvage efforts are now focused on the collapsed parking garages and a missing man, believed to be buried in the rubble. Workers have broken a 30-foot-square hole in the outdoor plaza between the two towers and a 25-ton construction crane is in place to begin removing larger chunks of debris. World Trade Center officials said the removal of several large concrete slabs, some more than 100 feet square in size, will be tricky.

"We need to have an engineered solution to be sure we don't create a larger problem while removing the large slabs of debris," said Eugene Fusillo, the complex's chief engineer. Mr. Fusillo indicated that protecting the giant coolers on the B-5 level of the garage is a key objective in debris removal. The custom-made coolers provide air conditioning for the complex. Replacing them could take several months, but officials are confident that the coolers are either undamaged or repairable.

World Trade Center officials said the search for Wilfredo Mercado, an employee of the Vista Hotel, remained "the top priority" for salvage crews. But it may be some time before the salvagers can reach the bottom of the pile, which includes four floors worth of rubble. Mr. Fusillo said about 2,500 tons of debris must be removed; only 700 tons have been hauled away so far.

DATE 3-12-93

## The New York Times

As Shadowy Figures Slip In,  
U.S. Faces Queries on Aliens

By FRANCIS X. CLINES

When Mohammed A. Salameh, one of the two main suspects in the bombing of the World Trade Center, entered the United States as a temporary foreign visitor in 1987, he quickly slipped through a Federal Immigration bureaucracy that had no plan or hope of ever tracking him amid the nation's vast tide of illegal aliens.

He joined about 500,000 other visitors who drift from sight annually as their visas lapse. They usually are never traced or thought of again until such a moment as now when startled, angry Americans begin questioning whether the United States immigration system presents a model of sanctuary or of porousness for the global throngs seeking entry.

## Pointing to Conflicts

As mysterious as Mr. Salameh's residency and history have been, critics of the nation's overwhelmed immigration procedures are even more puzzled by the immigration history of Sheikh Omar Abdel Rahman, the fundamentalist Islamic cleric whose earlier calls to militant action have made him a controversial, but far from formally accused, figure closely watched now in the bombing inquiry.

Together the two cases exemplify some of the worst problems of the nation's procedures for dealing with more than 20 million people who come to the United States as temporary visitors each year, as well as a new boom-tide of political asylum seekers that is swamping the process.

In particular, the two cases lay bare essential conflicts between the State Department, which handles the issue overseas, and the Immigration and Naturalization Service, which is responsible once visitors arrive in the United States. Overseas consular officials, for example, can easily, sometimes erroneously, in a simple administrative decision, grant a visa to someone as in the case of Sheikh Rahman, who was on the State Department screening list of about a million names as a potential troublemaker.

But such a visitor, once challenged within America for dubious credentials, is then entiled to a full array of hearings and appeal procedures, as the sheik is now doing, which would allow the person to remain in the country for additional years.

"I don't know of anybody we can

deport easily or quickly if they don't want to go voluntarily," said Duke Austin, a spokesman for the I.N.S.

Beyond the challenge of ever tracing individuals among the nation's uncounted millions of illegal aliens, the criminal inquiry into the bombing includes a perhaps more relevant question: How close is the cooperation between the I.N.S. and Federal Bureau of Investigation, which is responsible for guarding against crimes of domestic terror and watching for developing threats.

The F.B.I. has thus far given no clear indication of whether agents had previously conducted tight surveillance of the mosque in Jersey City where some of the sheik's fundamentalist followers sometimes congregated to hear his calls to militancy.

Critics in Congress and elsewhere hypothesize that the bomb plot might have been frustrated in its formative stages if Government agents, attracted to Sheikh Rahman's growing notoriety here and reputation overseas for fomenting violence, had been investi-

gating believers like Mr. Salameh and checking his right to be here.

The F.B.I. declined to discuss its investigative methods, but Mr. Austin said the I.N.S. had "no record that any Federal agency has ever contacted us" as to whether Mr. Salameh was an illegal alien.

He noted that the F.B.I. can be understandably wary of compromising an investigation. There have been cases where the F.B.I., after finding no basis for criminal indictments, asked the I.N.S. to begin exclusion proceedings against some apparently illegal aliens, but these, too, usually became drawn-out legal cases not leading to fast deportation, according to the I.N.S.

## Calls for More Diligence

"There's obviously not enough coordination," said Representative Charles E. Schumer, a Brooklyn Democrat who is conducting hearings into the bombing. "How well the F.B.I. tracked Sheikh Rahman is a big question. If they had some suspicion he was here illegally, perhaps the two agencies should have been more forceful."

Representative Tom Lantos, a California Democrat who is chairman of the House subcommittee on interna-

1990. The sheik was on a department watch list because of his militant opposition to the Egyptian Government and his trial, but eventual acquittal, in the assassination of President Anwar el-Sadat. The list, known as the Alien Lookout System, has about one million assorted names of foreigners barred for entry.

State Department officials explained the mistake, saying that the sheik's name and other information was not spelled correctly at the consulate in Khartoum where he applied. Once Sheikh Rahman was in the United States, the I.N.S. said it committed

a separate error by granting him permanent resident status as a religious leader on April 9, 1991. The agency revoked it on March 4, 1992, when it was finally discovered that he had a record of polygamy and check fraud that should have barred him.

An F.B.I. investigation was required when permanent residency was first proposed, said one official who would not comment further on what the result was. But it is not clear why negative information did not turn up until almost a year later.

"I have trouble understanding how this so-called cleric got a visa when he is so palpably unique in appearance and was so much in the news prior to getting the visa," Representative Lantos said, referring to the sheik's blindness and firebrand's image, and the requirement for a personal interview. "And, once he was here, I have difficulty understanding how an individual whose principal function was to incite, overthrow and violence can take advantage of immigration procedures. We are not idiots, you know."

But I.N.S. officials and immigration lawyers note that under laws liberalized in 1980, people involved in visa and residency challenges are

guaranteed much the same free-speech and legal rights as any American citizen once they are within the country. The I.N.S. has a smaller watch list of 50,000 names that is more rigorous because criminal records and other hard evidence is required in domestic hearings, in contrast to the diplomatic intelligence underlying the larger State Department watch list. Sheikh Rahman was not on the I.N.S. list, officials said.

Congressman Schumer has proposed stationing I.N.S. agents in foreign consulates to coordinate visa procedures, and he wants more detention centers built in New York to handle some of the 1,000 political asylum seekers who arrive each month. At present, most of them are given hear-

ingational security, is pursuing the initial question of the State Department's admitted mistake in having granted a visitor's visa to Sheikh Rahman in

ing dates a year or more into the future and allowed freely into the country in the meantime. Half of them never show up for hearings, Mr. Schumer said.

Asylum petitioners like Sheik Rahman, acting under greater legal rights guarantees, have swamped the hearing and appeals process of the I.N.S. with a 50-fold increase in the last decade, with 100,000 new petitions submitted annually to a backlog of hundreds of thousands of unsettled

cases. Previously, there were about 2,000 asylum claims a year, most of them handled in a matter of days with legal recourse more restricted.

Under the law, most asylum petitioners must be allowed to enter the nation pending judgment of their appeal because the Government lacks the resources to detain them properly and by law can no longer simply turn back even the most dubious cases at the border. In the case of Sheik Rahman, he would appear to have a valid argument about concern for his future should he be returned to Egyptian authorities because of his continued militant comments.

The more lenient asylum situation, put into effect in reaction to previous problems of bureaucratic abuse and ideological searching, has become something of a worldwide Siren's call to foreigners, immigration specialists say. Even some people from such unlikely nations as France and Britain, they say, destroy their travel documents en route here and claim asylum these days at Kennedy International Airport as they search for a better life for themselves, more than a different political climate. Others are in genuine flight from oppression.



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^Terrorism Spotlights Nation's Estimated 3 Million Illegals<

^By JIM DRINKARD=

^Associated Press Writer=

WASHINGTON (AP) - Congress, its attention fixed by the alleged involvement of two illegal aliens in recent terrorist incidents, is demanding better enforcement of America's immigration laws.

Lawmakers this week received promises from the Clinton administration that it would examine the procedures that allowed a Jordanian man charged in the World Trade Center bombing to overstay his tourist visa for four years, and a Pakistani man implicated in a CIA shooting to get a job, a driver's license and an assault rifle.

Attorney General-designate Janet Reno promised at her confirmation hearing to put new emphasis on the Immigration and Naturalization Service, an oft-neglected agency with the mammoth job of monitoring the nation's borders.

"I want to make sure the resources are allocated," she told the Senate Judiciary Committee.

And Secretary of State Warren Christopher acknowledged to a House panel that "our performance has been less than perfect" and called for "a more rigorous approach" to immigration enforcement.

Unofficially, the INS estimates there are 3 million to 5 million illegal immigrants in the United States. Immigration experts say they expect little to change. The conflict is one between security and maintaining an open society that brings in tourist dollars and foreign business.

The question of security, however, has taken on new urgency by two events only weeks apart: A shooting that killed two people outside CIA headquarters and the New York bombing.

Mohammed Salameh, 25, a Jordanian arrested in the New York bombing, had been in the United States illegally since 1988, even though police say he was known by their anti-terrorism unit.

Sheik Omar Abdel-Rahman, an Egyptian cleric whose followers include Salameh, is in the country through a series of errors - despite being on a 440,000-name watchlist of potentially ineligible foreigners.

And Mir Aisal Kansi, 26, a Pakistani charged in the Jan. 25 CIA shooting entered the United States in 1991 without leaving a computer record, probably using fake identification.

Kansi, now the subject of a manhunt in his homeland, had asked for political asylum last year, which won him a routine one-year work permit. He used that to get a Virginia driver's license, which in turn allowed him to purchase the AK-47 police charge he used in the killings.

Robert Horan, the Virginia prosecutor who is handling the CIA shooting investigation, said he has been "astounded" at the number of illegal immigrants who have surfaced as part of the investigation.

"Of the 30 to 50 immigrants we've talked to, at least half aren't allowed to be here," including Kansi's roommate, who was a security guard at Dulles International Airport, said Horan.



Foreigners who want to come to the United States must apply for visas at a U.S. embassy or consulate in their countries. The visa gets them past INS officials at airports and other ports of entry, where a computerized system records their arrival.

But Moran said his investigation brought him in contact with ways to evade the system, including "what appears to be a market in passports."

The asylum claim system is subject to perhaps the greatest abuse. With a backlog of 250,000 cases, it can take a year or more for the required hearing to be scheduled. Foreigners routinely make asylum claims as a last-ditch way to avoid deportation.

"I don't know any way, in an open society, that you can keep track of people unless we put some kind of a beeper on everybody who comes in," said INS spokesman Verne Jervis. "Congress is going to have to make a determination as to whether we've reached a point where we need to tighten things up."

AP-ND-03-12-93 0917EST<



The Dallas Morning News

Friday, March 19, 1993

## EDITORIALS

# POLITICAL ASYLUM

## U.S. entry laws must adjust to a modern world

When Mir Amal Kanshi, a Pakistani citizen, presented himself before U.S. immigration authorities at New York City's JFK Airport on Feb. 27, 1991, he produced a valid 30-day visa issued to him by the U.S. Consulate in Karachi. But in a skillful demonstration of how to break, abuse and manipulate U.S. immigration laws, Mr. Kanshi proceeded to overstay his visa. After a full year, he then applied for political asylum. In effect, his monthlong visit turned into a two-year stay that ended only after he allegedly murdered two people outside CIA Headquarters in Langley, Va., in early February.

Those who think Mr. Kanshi's achievement in staying here as long as he did was unusual should consider that in the course of a year about 35,000 individuals arrive at U.S. airports from Los Angeles International to JFK *illegally* and proceed to claim political asylum. While some are detained, many more are simply released after having been extended work authorization. Many are never heard from again.

Rep. Charles Schumer, D-N.Y., now wants the government to increase immigration pre-inspections overseas, but that is impractical. Those countries that are most likely to export terrorists and other undesirables are precisely the ones least likely to cooperate in setting up bilateral agreements in the first place. Congress would do better to revisit visa and political asylum laws, just as it should resist claims by airlines to reduce their liability for the costs of detaining people without documents.

Congress should permit the summary exclusion of people who attempt to enter the United States without documents, or with

fraudulent documents. In the case of political asylum claims, the immigration service should be given the authority to determine the validity of claims immediately. Once adjudicated, the number of appeals should be reduced. Finally, if a person arrives on a travel visa with the intention of claiming political asylum, that individual should be required to do so within a reasonable period of time, say 60 to 90 days. A failure to file in a timely manner — surely not an unreasonable requirement of someone claiming to be fleeing imminent danger — would mean automatic forfeiture of any future political asylum claim. Such a revision would end the common practice of holding a claim of political asylum as a trump card.

Mr. Kanshi, the alleged CIA gunman, could have entered this country even if such measures had been in place two years ago. But at least the United States would not have been sending out a virtual invitation to abuse our visa and asylum regulations. So imprudent is our policy that it probably led Sheik Omar Abdel-Rahman, a fanatical Muslim fundamentalist residing in New Jersey who may be connected to the terrorists in the World Trade Center bombing, to obtain a U.S. visa, despite being on the State Department's list of suspected terrorists. He too applied for political asylum, but the claim was denied on Tuesday. Because asylum is precious to the individual who genuinely deserves it, the government must vigorously challenge the use of false asylum claims as a means of circumventing immigration laws. Yet before asking foreign governments for assistance in this matter, Congress should get its own house in order.

# THE CHRISTIAN SCIENCE MONITOR

## Terrorist Incidents in the US Raise Immigration Concerns

By John Dillan

Staff writer of The Christian Science Monitor

WASHINGTON

**P**OLITICAL refugee? Or political terrorist?

The question haunts federal officials as the number of people seeking political asylum in the United States swells to more than 8,000 a month.

Many foreigners, aided by smugglers, carry bogus passports and tell exaggerated tales of political and religious persecution back home. Overworked US officials and courts take years to process their cases. Meanwhile, the "asylees" walk free, and even hold jobs in the US.

Officials often know little about asylum seekers. But in the wake of recent terrorist attacks, there is new sentiment in Washington for more border security, and closer examination of those entering the US.

The Jan. 25 murder of two officials of the Central Intelligence Agency (CIA) in suburban Washington, and the bombing of the World Trade Center in New York brought the issue to a head. Illegal residents are suspects in both terrorist incidents, the worst here in history.

Mir Almal Karsal, a Pakistani charged in the CIA shooting, entered the US with a business visa, then asked for political asylum. Two years later, his case still pending, he was living in Virginia at the time of the attack.

Mohammed Salameh, a Jordanian arrested in connection with the trade center explosion, arrived with a six-month tourist visa in 1988, then applied to stay in the US under two amnesty programs. Although denied residency, he is still here.

In a related case, Sheik Omar Abdel Rahman, the radical Muslim cleric who preaches at the New Jersey mosque where Mr. Salameh and fellow trade center suspect Nidal Ayyad worship, announced he will fight a deportation order issued Wednesday.

Critics and some members of Congress, including Rep. Bill McCollum (R) of Florida, are demanding that the government stiffen border enforcement. Representative McCollum says: "We are being forced to accept thousands of people a month whom we know nothing about."

Yonah Alexander, an expert on terrorism, says many of those entering the US are obviously genuine refugees. Yet even a few hundred terrorists among them "can cause a great deal of problems," Dr. Alexander says.

Alexander, who teaches at George Washington University, says: "We have to improve our procedures to find out who the people are, and create some mechanism to expedite the ... process."

To that end, McCollum this week introduced the Exclusion and Asylum Reform Amendments of 1993, which would grant federal officials immediate authority to expel aliens who enter the US without proper documents. That would include anyone whose claim of political asylum does not seem based on "a credible fear of persecution."

Yet Horace Busby, who served in the Johnson White House, says political sentiment still won't support a strong border crackdown.

"Only if we have a few more major incidents ... only then will there be pressure in all directions" for action, he predicts.

Joseph Churba, president of the International Security Council, a Washington, D.C., think tank, says America's open borders present a growing danger.

"The laws are so lenient that they are inviting terrorism," Dr. Churba says. "As it stands today, a person can come into New York and plea asylum without any papers and [he] would not be detained. He would be free ... to move around the United States on his own cognizance."

"I think we have to take a second look at the openness of the United States, because openness is a blessing, but it can also be a curse from a security point of

view," Alexander says. "We need to strike a balance between security and human rights."

**A**NY crackdown on asylum seekers could provoke an outcry from human rights advocates, who see the US as a last hope for many persecuted peoples.

There were only 24,000 asylum requests in 1984. That jumped to 101,000 by 1989. Officials see no letup.

The largest numbers come from Central America, China, Haiti, and Eastern Europe. Many show up without papers at airports like JFK in New York City. Officials cannot legally hold them, or send them home.

As a result, backlogs are growing. Last year, the Immigration and Naturalization Service processed only 22,674 cases, while the backlog grew to 135,000. It could reach 215,000 this year, INS officials say. Most asylum seekers avoid the hearings, and drop out of sight.

Representative McCollum says that when the law was passed, only 5,000 persons a year were expected to claim asylum. It's now 20 times that.

It is "rampant abuse," he says. Officials also point to another growing, and related, problem. More than 500,000 foreign tourists a year (out of 25 million) are failing to leave the country when their visas expire. Many become illegal residents.

3-19-93

## THE NATION

## FBI hunts 6th bomb suspect

By Bruce Frankel  
USA TODAY

NEW YORK — The FBI has launched a global manhunt for an Iraqi-born suspect believed to be the last of the core conspirators in the World Trade Center bombing.

A warrant was issued for Ramzi Ahmed Yousef, 25, on Wednesday after he was named the sixth suspect in a new bombing indictment.

Investigators say he shared a Jersey City apartment with Mohammed Salameh, a key suspect in the Feb. 26 bombing that killed six, injured more than 1,000 and has led to \$500 million in insurance claims.

"We have no idea where he is. He could be in the area. He could be anywhere," said Joe Vallquette, an FBI spokesman.

Wednesday's indictment charged Yousef and three others previously indicted — Sala-

man Air flight on Sept. 1, 1992, said Immigration and Naturalization Service spokeswoman Rosemary LaGuardia.

A review of his passport showed he left Iraq at the end of April and traveled to Jordan for four days before flying to Pakistan. He paid a Pakistani Air official \$2,700 for a boarding pass, arriving without an Immigration visa, she said.

At John F. Kennedy International airport, Yousef sought asylum, was given an exclusion hearing date, and was released "due to our lack of delinquent space," LaGuardia said.

Immigration hearings were adjourned Dec. 8 and Jan. 24 first for lack of a lawyer and then because Yousef's lawyer said he was in an accident. INS records show. A judge issued an arrest warrant after Yousef missed a hearing last week.

Yousef may have fled the USA days after the bombing

with Abouhalima, the alleged mastermind of the bombing. Investigators say, FBI agents in the 17-story twin towers returned Abouhalima from Egypt last week.

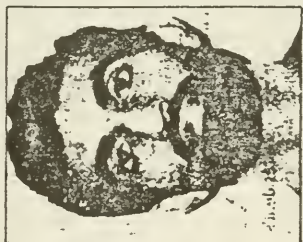
Defense lawyer Robert Precht said Salameh acknowledged knowing Yousef "on a very casual basis." But Salameh says he was never Yousef's roommate, Precht said.

Salameh said Yousef was a passenger in a car he was driving when he had an accident hotel Jan. 17, CBS Evening

Jan. 24, Precht said. He said Yousef's use of Salameh's address was "innocent."

Leonard Weinglass, a lawyer for Ayad, has said Ayad had no evidence that a large group in the Salameh was in an accident. The two were briefly partners in a candy business and shared a bank account, he said.

Salameh was arrested when he returned to a Jersey City company to demand a \$400 deposit for a rental van in investigators say.



YOUSEF: FBI says sixth suspect could be anywhere.

me, Mahmud Abouhalima, 33, of Woodbridge, N.J., and Nidal Ayad, 25, of Maplewood, N.J. — in the World Trade Center bombing.

Yousef, traveling on an Iraqi passport, arrived in New York from Karachi aboard a Paki-

APPENDIX 2.—LETTER DATED MAY 13, 1993, WITH ENCLOSURES, TO  
 REPRESENTATIVE ROMANO L. MAZZOLI, FROM JAMES J. HAGGERTY,  
 CHAIR, THE ASSOCIATION OF THE BAR OF THE CITY OF NEW  
 YORK

THE ASSOCIATION OF THE BAR  
 OF THE CITY OF NEW YORK  
 42 WEST 44TH STREET  
 NEW YORK, N.Y. 10036-6690

COMMITTEE ON IMMIGRATION AND NATIONALITY LAW

RECEIVED

MAY 14 1993

IMMIGRATION

JAMES HAGGERTY  
 CHAIR  
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 (212) 614-1259  
 FAX # (212) 614-1201

May 13, 1993

MARIA MEJIA-OPACIUCH  
 SECRETARY  
 665 FIFTH AVENUE, 2ND FLOOR  
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BY HAND

Representative Romano L. Mazzoli, Chairman  
 Subcommittee on International Law,  
 Immigration, and Refugees  
 United States House of Representatives  
 Washington, D.C. 20515

Re: Report on Legislation  
Regarding H.R. 1355

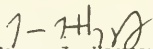
Dear Representative Mazzoli:

Enclosed please find our Committee's report disapproving  
 H.R. 1355, together with six profiles of successful asylum  
 applicants, chosen as compelling examples by members of the  
 Committee. Under the proposed legislation, these individuals could  
 have been summarily excluded.

The Association of the Bar of the City of New York is an  
 independent, professional organization with membership comprised  
 of over 19,000 judges and lawyers. Founded in 1870, the  
 Association has a long-standing commitment to human rights and  
 improving the administration of justice.

Thank you for your consideration of and attention to this  
 matter.

Very truly yours,

  
 James J. Haggerty  
 Chair

Enclosures



THE ASSOCIATION OF THE BAR  
OF THE CITY OF NEW YORK  
42 WEST 44TH STREET  
NEW YORK, N.Y. 10036-6690

COMMITTEE ON IMMIGRATION AND NATIONALITY LAW

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REPORT ON LEGISLATION

COMMITTEE ON IMMIGRATION AND NATIONALITY LAW

S. 667 and H.R. 1155 - Summary Exclusion Bills

THE BILLS ARE DISAPPROVED

The proposed legislation would allow front-line Immigration and Naturalization Service ("INS") officers to summarily exclude individuals attempting to enter the United States, allegedly without proper documentation, thereby turning away untold numbers of legitimate asylum seekers. The Committee strenuously opposes this legislation, which vitiates this country's commitment to the protection of persons fleeing persecution and abrogates the carefully constructed and newly amended asylum system by eliminating all safeguards against the wrongful denial of asylum.

THE BURDEN OF IMPROVING THE ADMISSIONS PROCESS AT  
AIRPORTS HAS BEEN IMPROPERLY PLACED ON THE WORLD'S REFUGEES

If enacted, the proposed legislation would summarily exclude any alien presenting a document determined by an INS officer to be fraudulent, or otherwise improper. Summary exclusion is an attempt to frustrate the efforts of aliens abusing the asylum process. Instead, it would tragically deny those for whom the United States is a last resort, the opportunity to apply for asylum, unless able to convince the front-line INS inspector that presentation of improper documentation was necessary to escape persecution or to depart from a country where the asylum seeker faces a significant danger of being returned to persecution. Persons fleeing persecution, in a desperate search for freedom, are rarely able to obtain proper documentation with which to enter the United States. It is these very people, racked with fear, overwhelmed by exhaustion, frustrated by an inability to communicate effectively in the English language or to understand the legal issues, who will be compelled to make their cases to an INS inspector, immediately at the port of entry. An inability to do so could well mean loss of life or liberty. The burden of improving the admissions procedures at airports can and should be placed somewhere other than on the world's refugees.



# THE IMMIGRATION INSPECTOR IS JUDGE AND JURY

Summary exclusion subverts the country's renewed commitment to a more balanced asylum adjudicatory procedure. The recent retooling of the asylum regulations was meant to eradicate abuses inherent in the former system. Asylum cases are now decided by trained asylum officers, who have studied country conditions and are sensitized to cultural differences. Yet the proposed legislation would turn over to an INS employee charged with regulating entry the right to determine whether an individual seeking asylum has a credible fear of being returned to the country from which the alien fled. Inspectors are not trained to deal with cultural differences or foreign country conditions, and have their own biases, which can easily be injected into the system, without the safeguard of review.

Determinations as to the validity of documentation submitted for admission to the United States are also left to an INS inspector. In point of fact, questions as to whether a document is fraudulent or forged or tampered with are often contested issues at an exclusion hearing, in which the alien may prevail. Yet the proposed legislation would give one front-line INS employee the right to decide issues which have traditionally been placed in the hands of experienced immigration judges, who have had the opportunity to examine all the evidence, including expert testimony. This is too great a burden to place on a single person, no matter how conscientious that person is.

## ASYLUM APPLICANTS AT THE AIRPORTS ARE SUBJECT TO A HIGHER STANDARD OF REVIEW

An INS officer is charged with determining whether the alien's "presentation of [a] document was pursuant to direct departure from - (A) a country in which the alien has a credible fear of persecution; or (B) a country in which there is a significant danger that the alien would be returned to a country in which the alien would have a credible fear of persecution." As defined in the proposed legislation, "'credible fear of persecution' means (A) it is more probable than not that the statements made by the alien in support of his or her claim are true; and (B) there is a significant possibility, in light of such statements and of such other facts as are known to the officer about country conditions, that the alien could establish eligibility as a refugee within the meaning of Section 101 (a)(42)(A)."

Congress has created a standard of review more difficult to meet than that articulated by the Supreme Court in INS v. Cardoza-Fonseca, 480 U.S. 421 (1987), and its progeny. Matter of Magharrabi, Int. Dec. 3028 (BIA 1987). The test, under current law, is whether a reasonable person in like circumstances would fear persecution if returned to her native country. The proposed "credible fear" and "significant danger" standards are a departure from the now well-established law of the land. Those compelled to proffer their claims to immigration inspectors and meet the proposed standard of review, must do so without even the benefit of an advocate.

#### APPLICATIONS FOR WITHHOLDING OF DEPORTATION PRECLUDED

The bills also deny the right to apply for withholding of deportation (Sec. 243 (h)) to those attempting to enter the U.S. with fraudulent documents. "Withholding of deportation" is an important protection currently available for those who are deemed to be likely targets of persecution. The right to apply for this relief is intimately linked to the asylum process. No additional administrative convenience is achieved by its elimination.

#### NO REVIEW BY ANY HIGHER AUTHORITY

There is no review of an adverse decision of the front-line INS officer. If enacted, Section 235 of the Immigration and Nationality Act would be amended to preclude any court from having jurisdiction to review any determination made with respect to an alien summarily excluded for improper documentation. Jurisdiction of petitions for habeas corpus would be limited to an examination of whether the petitioner is an alien, and was ordered "specially excluded."

There is nothing to avert the tragic consequences of a faulty determination by an INS employee. There is nothing to prevent bias and personal political beliefs from being injected into the system. There is nothing to be done about abuses.

If an alien is denied the opportunity to apply for asylum, the case will be closed.

## HARDEST HIT ARE REFUGEES FROM THE PEOPLE'S REPUBLIC OF CHINA

Ironically, the proposed legislation would most dramatically affect persons fleeing from the People's Republic of China ("PRC"), the very population that was offered special protection by Executive Act of former President Bush, and for whom Congress has enacted legislation to allow for adjustment of status.

INS statistics reveal that more than one-third of the 800 individuals who applied for asylum at New York's Kennedy Airport in March 1992 were from the PRC. Over the last decade, nearly 70% of applications by PRC asylum seekers have ultimately been approved by the INS. Summary exclusion will prevent many of those fleeing repressive conditions in China from applying for asylum in the United States.

### SUMMARY EXCLUSION FLIES IN THE FACE OF ALL NOTIONS OF DUE PROCESS AND FAIRNESS

Historically, Congress has limited the classes of aliens seeking admission for whom the right to a hearing is proscribed to crewmen, stowaways and allegedly subversive aliens. Each is a discrete group. The summary exclusion bill has cast its net much farther and wider than ever condoned within recent history, catching within its reach not only the intended abusers of the system but those with legitimate claims of asylum.

Contrary to all notion of fairness, summary exclusion will effectively create two classes of applicants for asylum, those who manage to enter the U.S. either without inspection or by duping the immigration inspector, and those who have neither the time nor the resources to obtain proper documentation or to plan a more circuitous entry through a land border. The proposed legislation will encourage more entries without inspection (EWI) by those who have the leisure and wherewithal to do so. Persons who truly risk persecution will continue to come by air. At the mercy of front-line inspectors, many, if not most, may well be summarily excluded.

### CONCLUSION

The proposed legislation will place the fate of tens of thousands seeking safe haven in the United States solely in the hands of front-line INS officers who may have little training in the adjudication of asylum cases. There is no meaningful review.

An erroneous decision to turn away an alien with a legitimate claim for asylum will be irreversible. Genuine refugees will silently be returned to the persecution from which they mistakenly believe they have successfully fled.

Despite its high cost, summary exclusion will not even adequately address the concerns of its proponents. Thus, aliens who have abused the asylum system will still be able to do so by entering at land borders.

The proposed legislation contravenes all notions of due process and fairness and undermines this country's commitment to the protection of those fleeing persecution.

For all these reasons, the Committee urges the defeat of the proposed legislation.

Respectfully submitted,

*James J. Haggerty*

James J. Haggerty  
Chair

MMO/cl  
legislation.ltr

Members:

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Pat Young\*

\*Principal authors of the Report

Case: MMR

DOA: 10/26/90

POA: NYC - JFKIA

Detained?: No

Date Paroled: 10/26/90

Date of Interview/Hearing: 2/3/92

Date Asylum Granted: 2/3/92

Synopsis of asylum claim: Applicant, a 30-year-old single male from Afghanistan, was forcibly conscripted into the Afghan army in 12/87 when the military was still controlled by the occupying Soviet army. Applicant's father had been arrested by the government and executed because he had studied in the U.S., and his brother was arrested by the government for "opposing" it.

After two weeks in the military, applicant was arrested and imprisoned in the military KHAD prison in Kabul for criticizing the Communist government and the USSR to some fellow soldiers. He was detained there for four months, but managed to escape while being transported to another prison because the driver had been a classmate of his. Applicant then went into hiding until he was able to flee the country.

The INS Trial Attorney requested an adjournment of the hearing to call in the INS inspector at JFK Airport regarding a discrepancy in the statement taken from applicant at the airport upon arrival. The airport statement indicated that applicant had no siblings, apparently in conflict with his claim of his brother's arrest.

When the INS inspector testified before the immigration judge on this point, he stated that "sibling doesn't mean brother or sister, it means children." When informed by the judge of the correct meaning, the inspector continued to insist that sibling meant child. Asylum was granted with no further opposition from the INS Trial Attorney.



Case: JN

DOA: 7/18/92

POA: NYC - JFKIA

Detained?: Yes

Date Paroled: N/A

Date of Interview/Hearing: 1/15/93

Date Asylum Granted: 1/15/93

Synopsis of asylum claim: Applicant, a 37-year-old male physician and an ethnic Tamil from Sri Lanka, was arrested by the Sri Lankan army on 7/4/91. He was charged with being a LTTE (Tamil Liberation movement) member, although he had never aided or been involved in any way with the LTTE. Applicant was detained at an army camp for three months. He was detained in a room 3 feet X 8 feet with two other prisoners and was interrogated and severally beaten. Applicant was at one point brought to a courtyard and forced to kneel in front of armed soldiers to be executed, but was spared at the last moment.

Applicant arrived at JFK with a false photo sub passport. He had no proof of identity or supporting documentation in his possession. While awaiting his hearing, his relatives managed to forward to counsel documentation proving applicant's identity and documenting his claim of persecution. The INS Trial Attorney forwarded copies of the supporting documentation to the U.S. Embassy in Colombo, Sri Lanka for authentication. Applicant's counsel also contacted the Red Cross, which confirmed a record in its office in Sri Lanka of applicant having been released from an army detention camp on 10/2/91. The U.S. Embassy in Colombo also confirmed to the INS the authenticity of his documents. In addition, a witness was located and testified as to applicant's identity.

The INS Trial Attorney, who remained highly skeptical of the claim throughout the hearing, was by the end convinced of the truth of the claim and did not reserve appeal. All supporting documentation was obtained months after applicant's arrival in the U.S. during the pendency of his hearings, and was obtained with the assistance of counsel.

Case: PL

DOA: 10/12/90

POA: NYC - JFKIA

Detained: N/A

Date Paroled: N/A

Date of Hearing: 8/19/91

Date Asylum Granted: 8/19/91

Synopsis of asylum claim: Applicant, 25-year-old female mechanical designer from People's Republic of China ("PRC"), was the subject of an arrest warrant issued by the Public Security Bureau on October 15, 1989. She had participated in pro-democracy activities in Beijing from May 20 to June 4, 1989.

Applicant arrived at JFK with a false photo sub passport. She had no proof of identity or supporting documentation in her possession. While awaiting her hearing, her relatives managed to forward to counsel documentation proving her claim of persecution. Applicant's attorneys forwarded the arrest warrant to the U.S. Consulate in Guangzhou, PRC. The consulate informed the attorneys that it could only authenticate the signature of some provincial-level Chinese officials. The INS Trial Attorney forwarded the arrest warrant to the Forensic Document Laboratory. The INS did not have any specimens of any documents resembling the arrest warrant and could not determine if it was authentic.

At the hearing, the INS Trial Attorney tested applicant's ability to recall times, dates and places during her testimony. Applicant was able to defeat any attempts to discredit her testimony. The Trial Attorney believed the truth of her claim but reserved the right to appeal. However, an appeal was not filed.

Case:DOA: 7/18/92POA: Washington, D.C.Detained?: NoDate Paroled: 4/90Date of Hearing: 7/92Date Asylum Granted: 7/92

Synopsis of Asylum Claim: Applicant, was a 26-year-old instructor at People's University in Beijing, People's Republic of China ("PRC"), specializing in the history of the Cultural Revolution.

Applicant had participated in advising student leaders and others during the Tiananmen protests and had engaged in nonviolent protests, including assisting hunger strikers. He also aided visiting American professors during the Democracy Movement in the PRC, without the knowledge of People's University superiors. Photographs provided physical proof of applicant's presence during Tiananmen Square marches/protests. Applicant had also surreptitiously written various reference materials regarding the Cultural Revolution which were not flattering in their portrayal of Chinese officials.

Applicant was placed in exclusion at Washington, D.C. for not having proper documents. He expressed the desire to seek asylum because of feared repercussions for assistance to students and foreign visitors during the 1989 Democracy Movement in the PRC.

Applicant clearly expressed his fear of persecution if his activities were to become known to PRC officials. The Immigration Judge granted the application for asylum and terminated exclusion proceedings without appeal by the Immigration and Naturalization Service.

Case: Mr. P

DOA: 1/27/92

POA: Detroit, Michigan

Detained?: Yes

Date Paroled: 7/92

Date of Hearing: 2/3/93

Date Asylum Granted: 2/3/93

Synopsis of Asylum Claim: Mr. P, a national from Zaire, was detained at the airport while in transit to Canada, where he had originally planned to apply for political asylum. He was traveling with a false French passport and was taken into custody by the INS after U.S. Customs searched his belongings when he tried to go outside during a layover in Detroit. Mr. P was put in exclusion proceedings and held in the INS processing center in Laredo, Texas. In July 1992, he was released from detention following a pre-screening interview. He immediately left for Boston where he found legal counsel. Mr. P was granted asylum on February 3, 1993.

Mr. P had a real fear of returning to Zaire because of his political activities there. All Zairians upon birth are automatically enrolled into the ruling party in Zaire, the Popular Movement for the Revolution ("MPR"). In 19833, Mr. P began to actively oppose the MPR while attending the Institute of Science and Applied Technology. He attended meetings of a clandestine opposition party, PALU, a group that was opposed to Mobutu's one-party rule and committed to democracy and an end to corruption. He recruited fellow students into PALU and helped organize a student demonstration against the MPR that was to take place on February 16, 1989, but the government crushed the demonstration before it began, and those who were not killed or wounded, fled.

Mr. P was arrested by the security forces on February 18, 1989 while in hiding at his grandfather's house. They knew about his involvement in the PALU and interrogated him about its leaders. They beat him when he did not answer their questions; dripped molten plastic on his body, causing severe burns; and slipped sedatives into his food. Mr. P was held, without formal charges, for two and one half years and had no visitors. His brother, who was in the army, helped him escape to Brazzaville in the Republic of Congo. His brother then helped him to get out of the Congo with false documents and money when Zairian refugees began to be deported. Mr. P had a ticket to Canada and was en route when he was detained in Detroit.

Case: Mr. L

DOA: 10/10/92

POA: NYC - JFKIA

Detained?: Yes

Date Paroled: N/A

Date of Hearing: 3/12/93

Date Asylum Granted: 3/12/93

Synopsis of Asylum Claim: Mr. L, a Nigerian national, attempted to enter the United States on a fraudulent Nigerian passport. He was detained at JFK airport, put into exclusion proceedings and sent to Wackenhut Correction Center in Springfield Garden, New York. He was denied parole into the U.S. and wrote to Amnesty International's Refugee Office and requested assistance. The Refugee Office sent him a list of legal organizations that could possibly represent him and with that list, Mr. L found counsel. He was granted political asylum on March 12, 1993.

Mr. L is a Christian and had criticized the Muslim-controlled government for not permitting Christians to hold government positions. Mr. L's father, an ex-general in the Nigerian army, leader of the Christian Kataf tribe and critic of the Muslim government, was arrested, with other prominent Christians, after a series of religious riots between the Muslims and Christians. The father was held on trumped-up charges of murder and supplying arms to the Christians. Mr. L protested his father's arrest and demanded, along with others whose fathers had been arrested, that their fathers be released. Mr. L was consequently arrested, accused of "ganging up on the government" and severely tortured. After spending over three months in prison with no official charge against him, Mr. L escaped with the help of a priest who had been a regular visitor to him. The priest told him that his brothers had been killed, and he later found out that his father had been convicted of murder and sentenced to death by hanging. Mr. L hid until his false documents and his trip to the U.S. were arranged and was taken into custody upon his arrival at JFK.

In a response to a request for parole submitted by Mr. L's attorney, an INS officer stated that Mr. L could not be released for detention because the INS had reason to believe he would abscond. The Immigration Judge, on the other hand, stated on the record that in all his years on the bench, Mr. L's case was the most compelling one for granting asylum that he had ever heard.



# APPENDIX 3.—LETTER DATED MAY 7, 1993, TO SUBCOMMITTEE FROM THE NATIONAL ASYLUM STUDY PROJECT, HARVARD LAW SCHOOL

## NATIONAL ASYLUM STUDY PROJECT

A Project of Harvard Law School  
Program on the Legal Profession and Clinical Program

Deborah Anker  
Research Director  
Sarah Ignatius  
Study Coordinator

May 7, 1993

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Paul Wickham Schmidt  
Jones Day Reavis & Pock  
Former Acting General Counsel, INS  
Carol Wolchik  
ABA Immigration Project

Kevin Anderson  
Subcommittee on International Law, Immigration and Refugees  
B-370-B Rayburn House Office Building  
Washington, D.C. 20515

Dear Mr. Anderson:

Thank you for the opportunity to submit information into the record of the Subcommittee's April 27, 1993 hearings on the three asylum reform proposals. The National Asylum Study Project of the Harvard Law School, established in November 1991, has conducted the first comprehensive study of the recently-implemented asylum adjudication process of the Immigration and Naturalization Service, entitled "An Interim Assessment of the Asylum Process of the Immigration and Naturalization Service" (Dec. 1992). The Study Project will publish a final report in July of this year. Attached to this letter are excerpts from the Interim Assessment for submission into the record. A copy of the entire report is available from the National Asylum Study Project.

This letter presents three sets of statistics discovered in the course of conducting the study of the INS asylum process that may be of interest to the Subcommittee. The first is the nationality of asylum seekers, the second is the percentage of cases INS considered frivolous in deciding work authorization requests, and the third is the failure to appear rate of asylum seekers.

Numerous recent press accounts have reported on abuse of the asylum process. Since INS has not published statistics on the number of cases it considers fraudulent, other indicators may give some guidance on the extent of this problem. The first is the nationalities of asylum applicants. Over 92% of the 103,447 asylum applicants filing with the INS in fiscal year 1992 came from 25 countries with the top ten countries constituting 78% of the filings, according to INS statistics. All of these top ten countries are generally considered to be refugee producing, or are undergoing active repression, or political or civil turmoil:

Guatemala	43,834	China	3,440
El Salvador	6,730	Pakistan	3,323
former Soviet Union	5,823	India	3,160
Haiti	5,291	Cuba	2,368
Philippines	4,012	former Yugoslavia	2,313


The countries INS identified as presumptively frivolous (western European countries, Australia, New Zealand, Canada and Mexico) constituted less than 1% of total filings and amounted to 761 asylum applications.<sup>1</sup>

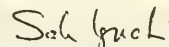
A second possible measure of frivolous filings is the number of asylum cases where INS denied work authorization, determining them to be frivolous. Under the asylum regulations, an applicant with a non-frivolous asylum case receives work authorization during the case. For fiscal year 1992 the INS denied work authorization for 9% of the asylum cases, determining them to be frivolous. Of 103,098 work authorization requests from asylum applicants, INS denied 7,893 and approved 81,731, according to INS statistics.

A third indication of abuse is the percentage of applicants who failed to appear at the INS for their asylum hearings (although there are many valid reasons for failing to appear, such as lack of notice of the interview, incorrect address, unavailability of counsel on that date, or emergent circumstances). According to INS statistics, the "no show" rate of asylum applicants for their interviews with the INS asylum officer corps averaged 10% nationwide for the first quarter of fiscal year 1993. Attached are the percentages at each asylum office.

We would be happy to provide the Subcommittee with further information or respond to specific requests about the asylum process.

Sincerely,

  
Deborah Anker  
Research Director

  
Sarah Ignatius  
Study Coordinator

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<sup>1</sup> Applicants from countries INS identified for expedited processing during fiscal year 1992 generated less than 1% of total filings:

Australia	3	Italy	5
Austria	1	Mexico	611
Belgium	1	Netherlands	6
Canada	10	New Zealand	2
Denmark	2	Portugal	19
Finland	2	Spain	6
France	39	Sweden	4
Germany	26	Switzerland	1
Ireland	4	United Kingdom	19

## ASYLUM INTERVIEWS CONDUCTED

MONTH: DECEMBER 1992

Office	Interviews Scheduled	No Shows		Interviews Rescheduled		Interviews Conducted
All Offices	5,842	951	16%	1,342	23%	3,533
Arlington	724	61	8%	268	37%	395
Chicago	163	9	6%	0		154
Houston	200	10	5%	90	45%	100
Los Angeles	1,839	462	25%	262	14%	1,115
Miami	988	58	6%	173	18%	741
Newark	1,165	240	21%	355	30%	570
San Francisco	763	111	15%	194	25%	458

NOTE: There were 16 cases closed at the interview; all were in the Miami Asylum Office.

FISCAL YEAR 1993: THROUGH DECEMBER

Office	Interviews Scheduled	No Shows		Interviews Rescheduled		Interviews Conducted
All Offices	19,575	1,860	10%	4,477	23%	13,193
Arlington	3,462	79	2%	978	28%	2,405
Chicago	681	66	10%	16	2%	599
Houston	591	31	5%	176	30%	384
Los Angeles	5,805	726	13%	1,331	23%	3,748
Miami	2,999	386	13%	632	21%	1,936
Newark	3,490	243	7%	873	25%	2,374
San Francisco	2,547	329	13%	471	18%	1,747

NOTE: There were 45 cases closed at the interview; all were in the Miami Asylum Office.

Source: Immigration & Naturalization Service

**EXCERPTS FROM THE NATIONAL ASYLUM STUDY PROJECT'S  
INTERIM ASSESSMENT OF THE ASYLUM PROCESS OF THE  
IMMIGRATION AND NATURALIZATION SERVICE (Dec. 1992)**

**SCOPE OF THE INTERIM REPORT**

**Introduction**

The Study Project is issuing this interim report after one year of study. The interim report is limited to an assessment of INS' success in implementing the structural reforms mandated by the 1990 asylum regulations, and to evaluations derived from the data collected over the course of the first year. The report also addresses the most visible and controversial asylum adjudication issue of the last year: the screening of Haitian refugees at Guantanamo Bay and the subsequent processing of their claims in the United States. The Study Project will issue a final report next summer that will comprehensively analyze the entire new asylum system.

**Criteria for Assessing the Asylum Process**

As an interim document, the report assesses the new asylum process on the basis of INS' announced goals for the program: fairness, sensitivity of the legal process, faithfulness to the Refugee Act of 1980, consistency in adjudications, and efficiency. The purpose of this report is to help identify problems in asylum adjudication, perhaps the most sensitive task the INS undertakes. In that context, we welcome INS' response.

Many problems identified in this report may be the result of INS' initiation of a new program separate from the INS district offices, with new asylum offices and new staff operating under new regulations. Many of the asylum officers are not attorneys previously trained in asylum law or legal reasoning, and many of the asylum office supervisors lacked previous management experience. INS recognized many of these problems and is attempting to address them. The success of these efforts remain to be seen.

The problems associated with the asylum program are not unique within the INS. INS is a government agency frequently criticized by its own officials<sup>1</sup> and the General Accounting Office for its inefficiency and mismanagement.<sup>2</sup>

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<sup>1</sup> Memorandum of former INS General Counsel Raymond Mamboise (Jul. 1989)(characterizing INS as "totally disorganized"), reported in 66 Interpreter Releases 1169 (Oct. 23, 1989); Memoranda of former INS General Counsel William Cook (stating that INS "reorganization is a disaster"), reported in Interpreter Releases 1325, 1327 (Nov. 19, 1990); Dept. of Justice Inspector General, Internal Studies, reported in 68 Interpreter Releases 217-18 (Feb. 25, 1991).

<sup>2</sup> See U.S. General Accounting Office (hereinafter "GAO"), Immigration Control: The Central Address File Needs to Be More Accurate GAO/GGD-92-20 (Feb. 1992)(22% of the

## EXECUTIVE SUMMARY

The Immigration and Naturalization Service ("INS") published final revised asylum regulations, effective October 1, 1990, significantly modifying INS' previous process of adjudicating asylum cases. After approximately two years under the new regulations, the National Asylum Study Project is issuing the first systematic study of the new asylum process, analyzing both the administrative aspects of the program and the quality of the asylum officer corps.

### Prior Asylum Process

INS asylum decisions under interim regulations prior to 1990 received widespread criticism from governmental and non-governmental agencies for doing little more than adopting the recommendation of the Department of State, regardless of the merits of the case. For example, the General Accounting Office found that INS examiners followed the recommendations of the Department of State more than 95% of the time. Applicants from countries considered "hostile" to the United States, such as the former Soviet Union, the People's Republic of China and Iran, were granted at a rate greater than 50%. By comparison, applicants from countries considered "friendly" to the United States, such as Guatemala and El Salvador, were granted at a rate less than 3%, regardless of the strength of the case. The asylum approval rate for applicants who said they were arrested, were imprisoned, had their lives threatened or were tortured was estimated at 3% for Salvadorans compared with 55% for Poles and 64% for Iranians, according to a governmental report in 1988.

Two major class actions encompassing hundreds of thousands of asylum seekers raised claims of bias and improper foreign policy influences in the prior asylum process: American Baptist Churches v. Thornburgh, a nationwide class of hundreds of thousands of Salvadoran and Guatemalan asylum seekers, and Mendez v. Thornburgh, a class of asylum

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records reviewed had inaccurately recorded names and/or addresses of applicants and 9% of attorneys, resulting in 12% of the people not receiving notice of hearings in immigration court). See also GAO, Immigration Management: Strong Leadership and Management Reforms Needed to Address Serious Problems GAO/GGD-91-28 (Jan. 1991); GAO, Financial Management: INS Lacks Accountability and Controls Over Its Resources GAO/AFMD-91-20 (Jan. 1991); GAO, Information Management: Immigration and Naturalization Service Lacks Ready Access to Essential Data GAO/IMTEC-90-75 (Sept. 1990); GAO, INS Bonds Delivery: Stronger Internal Controls Needed GAO/GGD-88-36 (Mar. 1988); GAO, Criminal Aliens: Majority from the New York City Area Not Listed in INS' Information Systems GAO/GGD-87-41BR (Mar. 1987); GAO, Immigration Reform: Systematic Alien Verification System Could Be Improved GAO/IMTEC-87-45BR (Sept. 1987).



seekers of all nationalities in the Los Angeles area. These cases were resolved favorably to the asylum applicants, allowing new asylum interviews by the new corps of asylum officers established in the 1990 rules.

### **Creation of the Asylum Officer Corps**

When the government published the new asylum rules in 1990, it highlighted its intent to create an asylum adjudication branch separate from INS enforcement branches, employing a new corps of asylum officers under national supervision outside the usual structure of local INS district offices to improve the quality and consistency of decision-making. This led to the opening of seven new asylum offices in Arlington, Chicago, Houston, Los Angeles, Miami, Newark and San Francisco in April 1991. INS also initiated a four-week training program for asylum officers and developed training materials on asylum practice, refugee law, and interviewing techniques.

The regulations also established a documentation center to disseminate to asylum officers credible human rights materials from governmental and non-governmental sources, thereby limiting exclusive reliance on Department of State materials that often reflected United States foreign policy concerns.

### **Overall Improvement in Asylum Interviews**

Study Project interviews of 290 attorneys and legal workers with experience in each asylum region found that in general the quality of asylum officer interviews has improved in comparison to interviews under the prior system. On the whole, asylum officers appear more knowledgeable about asylum law, more polite, and if not in every case more knowledgeable about country conditions, at least more willing to listen than the previous INS examiners.

The quality of the officers varies widely, however. At least two asylum officers in each of the seven asylum offices demonstrated unusual sensitivity, compassion and an understanding of asylum law (approximately 17% of the first group of 82 asylum officers). By contrast, at least one asylum officer in each region (approximately 8.5% of the original 82) exhibit the hostility and lack of interest associated with the previous process.

This substantial variation has led practitioners in each of the seven asylum regions to praise the overall improvement in the quality of the interviews, but to feel that the outcome of the case depends on which asylum officer handles it. In a representative comment, one practitioner said: "It's like Russian roulette."

The asylum officers exhibit varying knowledge of country conditions as well. Some appear more knowledgeable and others do not appear to know basic information, such as the meaning of "pogroms" against Jews, or the location of Guatemala or Sri Lanka. Others have knowledge of one nationality but not another, while others who do not know the country

conditions in every case let the applicant educate them.

### **Noticeable Changes in Decisions**

The asylum officers issued too few decisions during the last year to draw final conclusions about the quality of the decision-making. They issued 10,923 decisions in fiscal year 1992, leaving a backlog of 215,772 asylum cases as of October 1, 1992. They approved 4,019 cases and denied 6,904, for an overall approval rate of 36.8%. Under the prior system, the cumulative approval rate was 23.6% (from June 1983 to March 1991), with 41,227 cases granted and 133,178 cases denied. When the asylum officers started in April 1991 there were already 114,044 cases pending from the previous system.

There appear to be some noticeable changes in approval rates for applicants of certain nationalities, such as Salvadorans, Guatemalans and Haitians, who won asylum under the prior system less than 3% of the time and whose decisions were viewed as influenced by foreign policy considerations. The recent approval rate under the new process for Salvadorans was 28%, Guatemalans 21%, and Haitians 31%, according to official INS statistics for fiscal year 1992.

### **Troubling Signs in Decision-Making**

There are some troubling signs in the quality of decision-making, however. These include lack of legal reasoning, incorrect understanding of the fundamentals of asylum law, misstatements of central facts in the claim (such as the country of origin), and incorrect burdens of proof (such as requiring that an applicant be "singled out for persecution," a standard that the regulations specifically reject). The INS has taken several steps recently to improve the quality of decision-making, including the creation of temporary quality assurance teams in each asylum office and an increase in the number of supervisors in every asylum office except the two smallest -- Chicago and Houston.

Based on a preliminary review of decision-making, there also are indications that foreign policy issues unrelated to the merits of a claim may still be influencing the outcome. Some asylum officers, in denying cases, are relying on Department of State reports to contradict or override other credible objective sources and lengthy documentation submitted in support of the application. As one practitioner explained in a representative comment: "Some asylum officers let the State Department trump all other sources."

### **Special Treatment of Haitian Asylum Applicants**

Haitian Asylum Cases in the United States. Haitian cases, in particular, may be subject to special foreign policy pressures. These are the asylum cases of Haitians who fled from Haiti after the military coup in September 1991, whom the Coast Guard interdicted on the high seas and INS screened into the United States after an interview at the United States military base at Guantanamo Bay. INS screened-in 10,319 Haitians in 36,596 interviews.

according to official INS statistics, for an average screen-in rate of 28%. INS allowed the people screened-in to enter the United States to apply for asylum (except those who tested positive for H.I.V.), and repatriated to Haiti those INS screened-out.

Preliminary examples of special treatment of these Haitian asylum seekers in the United States include:

- **Expedited Scheduling.** INS set an expedited interview schedule for Haitian cases in Miami, even though INS deferred until at least 1993 the scheduling of clearly non-frivolous cases from other countries. Haitian cases would be clearly non-frivolous under INS' own terms since INS screened all these applicants into the United States at Guantanamo Bay after finding that they had a credible fear of persecution;
- **Special Scrutiny.** The Asylum Policy and Review Unit of the Department of Justice subjected the asylum officers' assessment of Haitian cases to added scrutiny, and recommended reversing over half (18 out of 33) of the asylum officers' initial recommendations to grant asylum;
- **INS Prejudgment of Cases.** A high ranking INS official made public statements that 90% of these Haitian cases would be denied even though at the time of his statements asylum officers had interviewed very few Haitian applicants;
- **Over-reliance on Department of State.** Notices of intent to deny cite Department of State information that directly contradicts numerous other credible and more recent sources that would support a grant of asylum;
- **Compromise of Confidentiality.** A major voluntary agency involved in resettling Haitians asserted that United States embassy officials in Haiti specifically went to the home of relatives of Haitians seeking asylum in the United States to investigate the asylum case, misrepresenting their authority to question the relatives. Such visits bring danger to family members and do not escape notice from the authorities (section chiefs) in the local community. They also compromise the confidentiality of the application, which the regulations require.

If final results correspond to these preliminary results, it will show that foreign policy considerations and political pressures are still able to influence asylum claims despite the creation of an asylum officer corps that is better-trained, more independent and more knowledgeable than previously.

**Screening at Guantanamo Bay.** The exodus from Haiti created the most serious refugee crisis of the past year in this hemisphere. The government responded by conducting screening interviews outside the United States for Haitians. It detailed the INS asylum officers to Guantanamo Bay from November 1991 to June 1992, when anywhere from 20-50% of the asylum officer corps was at Guantanamo Bay. President Bush's May 1992

executive order ended the screening of Haitians and began a program of repatriating to Haiti those interdicted at sea regardless of their danger upon return. The legality of that order is currently pending before the United States Supreme Court.

The quality of INS' screening of Haitian asylum-seekers varied with some officers exhibiting a knowledge of conditions in Haiti and an attentive and sympathetic attitude, and others displaying a lack of interest or hostility. It was, however, significantly better than INS' previous screening of Haitians interdicted by the Coast Guard at sea. Interviews at Guantanamo Bay tended to be longer, occurred in greater privacy, and were subject to quality control review. In almost ten years of Coast Guard cutter screening prior to the September 1991 coup, INS interviewed over 24,000 Haitians interdicted by the Coast Guard in brief ship board interviews and brought only 28 to the United States to seek political asylum.

The "screen-in" rate at Guantanamo Bay fluctuated widely, however. In mid-January it was 85%, although the average was 28%. During one period in early April 1992 it dropped to a low of 2% after a Department of State report on conditions in Haiti was circulated to the asylum officers and supervisors. These fluctuations leave the impression of inconsistent standards resulting in inaccurate or unfair results.

#### **Resource Information Center**

The Resource Information Center had a slow start due to limited funding and delays associated with agency review of its materials prior to dissemination. Although it hired excellent caliber personnel, the limited staffing and funding has been inadequate for the work. It recently accomplished several projects, however, that are central to asylum adjudication. In the summer of 1992, it completed a computer data base containing the INS asylum law manual and all of the country conditions information on 20 refugee producing countries from Canada's Immigration and Refugee Board Documentation Centre. In the Fall of 1992, the Resource Information Center began distributing to the regional asylum offices Master Exhibits, which are compilations of documents on specific issues or geographic areas of a refugee producing country, prepared by non-governmental organizations or individuals. It also distributed to each asylum office publications of credible non-governmental human rights monitoring organizations.

#### **Fewer New Cases Than Anticipated**

Despite the high number of cases in the backlog, INS is not facing an asylum crisis in new case filings. There were fewer new cases filed in fiscal year 1992 than INS anticipated. The asylum offices received a total of 103,447 asylum applications. Approximately 50,000 cases were due to the ABC Settlement Agreement, leaving approximately 53,000 non-ABC cases, significantly less than INS' projection of 80,000 new cases.

Applicants from 25 countries of origin comprised 92% of the cases filed in fiscal year

1992, with the top ten countries, generally considered to be refugee-producing, constituting 78% of filings. The top two were Guatemala with 43,834 and El Salvador with 6,730 cases, due primarily to the ABC Settlement Agreement. By contrast, applicants from countries INS identified as presumptively frivolous generated less than 1% of total filings, with, for example, 3 from Australia, 10 from Canada, and 2 from New Zealand.

### **Inappropriate Case Quotas**

INS has set a case completion goal of three hours per case that may undermine the improvement in interviews and the efforts to improve the quality of decisions. INS officials in several asylum regions expressed concern that meeting these productivity goals will sacrifice quality adjudication. Preliminary results show that the pressure to increase productivity is affecting the interviews of applicants, resulting in greater impatience of asylum officers at the interview and more superficial questioning of applicants. The pressure of the work load goals may also exacerbate problems with decision-making, resulting in superficial case review and analysis of the law and country conditions. INS' allotment of 45 minutes for an asylum interview appears particularly inadequate. Using an interpreter reduces approximately by half the time an asylum officer spends questioning the applicant, leaving approximately 22 minutes, about half of which is spent on the introduction, biographic information, and an explanation of the asylum process.

### **Widespread Administrative Problems**

While the asylum officers are on the whole better trained and more knowledgeable and open than the previous INS examiners, the administration of the program encountered substantial problems. The creation of new asylum offices occurred without adequate staffing and attention to operational issues. INS has recently undertaken measures to alleviate some of these concerns, including the hiring of additional clerical staff. Widespread administrative problems that left a general sense of frustration in most of the asylum regions during the last year included:

- Long delays in adjudicating cases, some of which were several years old;
- Lost files. In Los Angeles, during Study Project observation in the summer of 1992, on more than half of the days observed at least one asylum file for an applicant arriving for an interview was lost and on several days two to five files were lost. One Los Angeles attorney said that in eight of his ten interviews, the file had been lost;
- Incomplete files with some but not all of the information submitted in the file. Some asylum offices admitted this and specifically told attorneys that they should bring to the interview any additional materials filed in the case after the application;
- Lack of response to letters of inquiry from applicants and attorneys, and refusal to



answer inquiries over the telephone;

- Lack of notice of interview, with notices arriving within less than the three week period set by INS;
- Failure to adjudicate work authorization requests in a timely manner.

Shifting and Complex Processes. INS' shifting and perhaps needlessly complex procedural requirements also hampered administration. For example, in the summer of 1992, without notice INS began to require the use of new asylum forms and returned the old ones for refiling. The new forms were generally unavailable even when requested from asylum offices. INS then rescinded the order requiring the new forms, saying it would publish a notice in the future requiring them, yet INS offices erroneously continued to return applications filed on the old forms.

INS' varying plans for scheduling a mixture of new and old cases for interviews have been ineffective. The plans depended on the INS computer automatically scheduling a certain percentage of old and new cases for interview. The computer data base, however, did not contain 170,000 cases (at the end of December 1991), hence almost none of these cases were scheduled for interview. Many of them involved applicants who had already been waiting several years. The entry of these cases into the computer data base was not complete nationwide until the following October 1992, a year and a half into the new asylum program.

Inadequate Staffing. Although the number of asylum officers almost doubled by April 1992 (going from 82 to 150), the number of clerical positions remained the same. The approximately 20 new clerical staff authorized to accompany the new asylum officers remained unfilled until the end of September 1992. Thus, for six months the same number of clerks worked at offices some of which had almost tripled in asylum officers. San Francisco, for example, expanded from 8 asylum officer positions to 16, Newark expanded from 8 to 23, and Arlington expanded from 9 to 22, all without new clerks.

Inadequate Office Space. Other long-standing problems are still unresolved, such as an interviewing location in Los Angeles for the Los Angeles asylum office. The Los Angeles office is located in Anaheim, 30 miles from Los Angeles and a two-hour or longer bus ride. Los Angeles is by far the busiest asylum office with over 90,000 cases, almost half the total of over 215,000 pending cases. Representatives of applicants have requested that INS maintain a permanent interviewing location in Los Angeles to make the busiest asylum office accessible to applicants.

## **Work Authorization**

Issuance of work authorization, which INS must grant to asylum applicants with non-frivolous claims, encountered serious difficulties in the first year of the asylum program. Because most asylum offices did not act in a timely fashion, applicants were entitled

automatically to interim work authorization issued by the INS district offices. Problems surfaced in the working relationship between some of the new asylum offices and the INS district offices concerning work authorization, where asylum office officials did not appear to have authority to correct mistakes the district offices were making and the district offices were burdened with extra work from the asylum offices' failure to adjudicate work authorization in a timely fashion.

INS initial response to work authorization problems and the shortage of clerical staff was to parcel out a portion of the work to another INS branch. In May 1992 INS announced a new policy of using the INS Regional Service Centers to open case files and adjudicate work authorization. This plan, while expediting processing for the most part, has created new problems, such as erroneous denials of work authorization, erroneous classification of cases for expedited processing, incorrect return of applications, and a complicated filing process requiring another address and location.

#### **Issuance of Orders to Show Cause**

A subsequent modification of the 1990 asylum rules has already tempered the asylum officers' separation from enforcement functions. Supervisors of asylum offices now issue documents to begin deportation or exclusion proceedings against asylum applicants whose cases they deny, or who fail to appear at their asylum interviews. Asylum officials in several regions expressed concern over having asylum officers prepare these documents for issuance due to the substantial amount of time necessary to prepare the document and the difficulty in investigating the applicant's legal status and rights to other remedies, for which an asylum officer would need a broad background in immigration law which many lack.

#### **Teleconferencing Interviews**

INS experimented with teleconferencing technology for asylum interviews rather than traveling to circuit riding sites for in-person interviews. The technology does not appear suitable for asylum interviews due to the limitations of the technology (in the poor quality picture and the lag time between the audio and the video), and the significance of credibility in assessing an asylum claim.

## CHAPTER SIX

## INTERIM CONCLUSIONS AND RECOMMENDATIONS

The Study Project is limiting its interim recommendations to an assessment of INS' implementation of the 1990 regulations based on INS' announced goals. The final report will address systemic issues, including the appropriate administrative structure for asylum adjudication, and draw final conclusions about the INS asylum adjudication process. These interim recommendations are offered as recommendations to improve INS' implementation of the current process.

**Productivity Goals**

Interim Conclusions: The standard set for asylum officer productivity appears unrealistic, focusing on efficiency to the detriment of fairness and quality decision-making. INS needs a more flexible standard that would allow for variations in cases, such as the applicant's ability to speak English and express him or herself, the complexity of the factual or legal issues in the case, the assistance of counsel in preparing an application, in accompanying the client to the interview, or in preparing documentation. With the use of an interpreter reducing the time by half that an asylum officer spends questioning the applicant, INS' allotment of 45 minutes for an interview leaves approximately 22 minutes, about half of which is spent on the introduction, biographic information and an explanation of the asylum process.

Recommendations:

(1) Set realistic productivity goals for asylum officers, which should be goals and not strict time limits.

(2) Increase the amount of time set as a goal for each case to allow more flexibility in addressing the variables in individual cases. These variables include the complexity of the factual and legal issues, the applicant's ability to speak English or express him or herself, the extent of preparation in the case and representation by counsel. Increasing the amount of time per case should not significantly interfere with case completions given that new case filings were lower than INS anticipated (only approximately 5/8's of the projected total).

(3) Eliminate other tasks asylum officers perform that do not relate to asylum adjudication through implementation of other recommendations below, such as increasing the number of clerks, eliminating the preparation of orders to show cause, and hiring an asylum officer specifically to answer inquiries concerning cases.

## Training and Evaluation of Asylum Officers

Interim Conclusions: Asylum interviews on the whole are of a higher quality than under the prior system but within each region practitioners reported examples of at least one officer's lack of knowledge of the law and insensitivity to applicants. Some asylum officers have shown a lack of understanding of basic principles of asylum law, such as requiring past persecution to establish an asylum claim, requiring almost a certainty of persecution, or requiring that the applicant be "singled out for persecution." Others do not apply the law to the facts, but insert paragraphs on the law without an analysis of its relevance to the facts of the case. Newly-hired asylum officers undergo an initial four-week indepth training but never have a subsequent indepth training to remain current in new developments or to refresh their understanding of principles of asylum adjudication.

### Recommendations:

(1) Conduct additional regular and ongoing training of asylum officers on legal issues and asylum adjudication. Assist asylum officers who are not attorneys in understanding legal analysis and applying appropriate law to the facts.

(2) Supervise more closely asylum officers for whom there is consistent poor rating by supervisory asylum officers and quality assurance teams, and transfer from the asylum branch those who seem unable to meet quality standards.

(3) Improve through closer supervision and review the factual record in notices of intent to deny and final decisions to correct factual misstatements.

## Knowledge of Country Conditions

Interim Conclusions: Some asylum officers appear knowledgeable about country conditions and others do not. Some tend to rely exclusively on Department of State materials even when it is contradicted by other credible and more recent sources of human rights documentation.

### Recommendations:

(1) Increase training on country conditions and schedule additional presentations at local asylum offices from non-governmental organizations with expertise in human rights.

(2) Stress the importance of objective and credible sources of human rights documentation in addition to Department of State information and reduce asylum officers' exclusive reliance on the Department of State, especially when other credible and more recent sources of information contradict its assertions.

(3) Emphasize to asylum officers that asylum adjudication should not take into consideration foreign policy concerns, as stated in INS training materials.

### **Teleconferencing Interviews**

Interim Conclusions: INS conducted a pilot project on teleconferencing as a substitute for circuit riding to interview asylum applicants in person. The response of practitioners and NGO observers raised substantial concerns about its inappropriateness to judge credibility and subjective fear, the central elements in an asylum claim.

#### Recommendations:

- (1) Continue circuit riding and ensure that asylum officers conduct in-person asylum interviews.
- (2) End the pilot project on teleconferencing interviews.

### **Interpreters**

Interim Conclusions: Since applicants must bring their own interpreter to the interview, who may be a friend or family member, as well as a trained interpreter, the quality of the interpretation varies. As credibility is an essential aspect of the asylum claim, the INS asylum program may not be able to provide a quality interview without providing a skilled interpreter for those unable to afford one. In addition, some asylum officers and supervisors seem confused about the requirements for interpreters.

#### Recommendations:

- (1) Hire skilled interpreters for asylum interviews.
- (2) Conduct additional training with asylum officers and supervisors to clarify the requirements for interpreters and refresh asylum officers' understanding of them.

### **Haitian Asylum Cases**

Interim Conclusions: INS expedited case processing in Miami of Haitian asylum applicants screened into the United States at Guantanamo Bay. APRU initially subjected the preliminary recommendations of asylum officers on Haitian cases to special scrutiny. A top INS official evidenced prejudice of the merits of these cases and some asylum officers rely exclusively on Department of State documentation for issues that numerous other credible sources of documentation contradict. These events leave the impression that political or foreign policy considerations are influencing the adjudication of these asylum claims.



Recommendations:

- (1) Eliminate expedited scheduling of interviews for Haitians screened into the United States from Guantanamo Bay.
- (2) Ensure that INS does not apply an additional level of scrutiny to these cases, and that INS treats them no differently than applicants from other countries, as recently urged by the INS Commissioner.
- (3) Increase training of asylum officers on country conditions in Haiti, with emphasis on non-governmental sources of objective and credible information in addition to materials from the Department of State.

**Resource Information Center**

Interim Conclusions: The effective functioning of the RIC has been hampered by funding shortages and delay in review by other agencies.

Recommendations:

- (1) Provide adequate funding and staffing for the RIC and remove obstacles to its dissemination of materials.
- (2) Hire personnel in each asylum office to manage the human rights documentation and work as a liaison with the RIC.

**Administration and Management**

Interim Conclusions The asylum offices have not provided timely responses to inquiries about specific cases. Many regional asylum offices have experienced problems with misplaced files, failure to notify attorneys and applicants of scheduled interview dates, and failure to make changes of address in the computer data base. Only recently did INS hire additional clerical staff to address some of these problems.

Recommendations:

- (1) Hire or assign an asylum officer to respond to inquiries about specific cases.
- (2) Improve management of cases through training of the supervisors and directors of each asylum office in office management.
- (3) Monitor whether the recent increase in the number of clerical personnel is sufficient and if not, hire additional clerical staff.

## Backlog

Interim Conclusions: The INS has proposed a backlog unit to adjudicate pending cases. INS plans to require the applicants in this backlog to respond affirmatively that they wish to continue with their cases.

### Recommendations:

- (1) Eliminate the extra burden placed on applicants in the backlog to respond affirmatively that they wish to continue with their cases.
- (2) Ensure a prompt adjudication of the cases in the backlog through hiring additional asylum officers to handle the workload.

## Work Authorization

Interim Conclusions: INS substantially revised its handling of work authorization, effective May 18, 1992, and preliminary results show some improvement in processing applications. Problems have arisen, however, in the sorting and processing of some cases. In addition, INS has devised a complex procedure for work authorization involving three different addresses depending on the status of the case. Finally, areas of overlapping jurisdiction with INS district offices need clarification.

### Recommendations:

- (1) Increase training of employees of the RSCs who are processing asylum cases to distinguish ABC cases from non-ABC cases, to understand the meaning of frivolousness, and to understand the country specific sorting process for cases placed into Group 1.
- (2) Require attendance of RSC employees at asylum office meetings to understand the asylum adjudication procedure better, and monitor the performance of the RSCs to evaluate whether its continued role in the asylum process is necessary.
- (3) Clarify issues of overlapping jurisdiction with the INS district directors on issuance of work authorization for initial requests, renewals and cases transferred from other asylum offices, and the chain of command to resolve problems.
- (4) Simplify the filing procedures so that there is only one address (preferably the asylum office) where applicants send requests for work authorization and renewals and eliminate the current complexity of three different addresses for work authorization requests depending on the procedural posture of the case.

## Issuance of Orders to Show Cause

Interim Conclusions: Supervisory asylum officers have authority under interim regulations to issue charging documents, such as orders to show cause, to asylum applicants after denying a case, including applicants who fail to appear for their interviews. This raises concerns in light of INS' goal of separating enforcement functions from asylum adjudication, failure to enter new addresses into the computer data base, failure to enter rescheduling information and other clerical errors, asylum officers' limited time for asylum case adjudication and the limited knowledge of many asylum officers of other immigration remedies for asylum applicants.

Recommendation: Reduce asylum officers' duties by eliminating the power of supervisory asylum officers to issue orders to show cause and other charging documents starting deportation or exclusion proceedings.

## Los Angeles Asylum Office

Interim Conclusions: Los Angeles is the busiest asylum office in the country with over 99,000 cases, which is almost three times as many cases as any other asylum office. INS has placed the asylum office for Los Angeles in Anaheim, a location remote from the largest concentration of asylum seekers.

Recommendation: Maintain a permanent satellite office or circuit riding office in Los Angeles.

## Oversight

Interim Conclusions: INS has recognized that non-governmental organizations played a positive role in reforming the asylum adjudication process and has maintained an openness through national and local liaison meetings.

### Recommendations:

- (1) Allow responsible non-governmental researchers to study the asylum process with access to INS interviews.
- (2) Make asylum decisions publicly available for review with names and identifying details deleted.

APPENDIX 4.—PREPARED STATEMENT OF GEORGE B. HIGH, EXECUTIVE  
DIRECTOR OF THE CENTER FOR IMMIGRATION STUDIES

Center for Immigration Studies

Statement of George B. High, Executive Director of the  
Center for Immigration Studies  
for the Subcommittee on International Law, Immigration, and Refugees  
April 27, 1993

**ASYLUM REFORM LEGISLATION**

How to treat foreigners who arrive in the United States or are found to be in the United States without proper documentation and who then may ask for asylum is a difficult and sensitive issue. It involves U.S. commitments under international protocols not to return to their homelands those who are persecuted or have a reasonable fear of persecution. It involves issues of equity to American citizens and resident aliens in the United States. These interests include being protected from unfair employment competition, further overburdening educational and social services, and possible terrorist or other criminal activity by the aliens not entitled to be in this country. It is also an issue of equity to *bona fide* refugee applicants and other immigration applicants who wait their turn for entry into the United States from abroad. for, in the end, allowing entrance to bogus asylum seekers is bound to create a backlash against genuine asylum applicants.

The current system for dealing with the undocumented or the fraudulently documented who request political asylum is clearly inadequate. Paroling unidentified, unscreened aliens into the United States with no effective follow-up system of tracking and control is license for systematic abuse and exploitation. Americans have seen graphic evidence of this in the recent media focus on this issue. The escalating number of asylum applications — from about 3,600 per year before the 1980 Refugee Act was adopted, to an average of over 65,000 per year between 1986 and 1990, and over 100,000 in 1992, and the fact that most of these asylum applicants never appear at a subsequent hearing on their applications — is testimony that a significant loophole exists in the control of our frontier and that awareness of the loophole is spreading. It is clear to persons engaged in receiving and processing these applications for political asylum, and increasingly so to the public, that the majority of persons claiming this status at our ports of entry may be abusing the system in an effort to avail themselves of a short-cut route to employment and greater opportunity in the United States. If action to close the loophole is not taken expeditiously, it is reasonable to expect that the numbers of asylum applicants will continue to grow rapidly.

Remedying the problem is not, however, as easy as summarily excluding all applicants for admission who are not properly documented for entry to the United States. The issue of how to deal with persons who genuinely may be fleeing persecution must be addressed. We have an

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international and humanitarian obligation not to send a person back to a home country where he or she may face a reasonable likelihood of persecution or death.<sup>1</sup>

In this context, the proposed "Exclusion and Asylum Reform Amendments of 1993" (H.R. 1355) is welcome. It forthrightly addresses the issue of how to deal with aliens who are taking advantage of our commitment to humanitarian objectives and bypass orderly, legal immigration procedures. It correctly identifies the need to treat aliens in this category based on the questions of where they come from and how they present themselves to U.S. immigration authorities.

Inasmuch as international common carriers are required to screen passengers destined for the United States before boarding for appropriate documentation, it may be presumed that the alien who arrives in the United States on a common carrier without documentation has deliberately discarded that documentation because it is false. Therefore, a basis for exclusion exists.

A different, but complementary, approach to reducing the problem of fraudulent applications for admission to the United States is to expand the system of pre-inspection at the foreign ports where the greatest incidence of abuse has been recorded. H.R. 1153 addresses this need by building on the pilot pre-inspection program currently in effect. This expansion of the pre-inspection system is a constructive contribution to a more effective control of the nation's frontiers. However, during a time of major budget reduction, the question must be asked whether the costs of the pre-inspection program can be offset by reduced expenses at the ports of entry. If the costs will be greater, and incremental funding for the INS will be difficult to achieve, then the establishment of this increased pre-inspection would cause a further erosion of the Immigration and Naturalization Service's (INS) historically underfunded enforcement responsibilities.

It is important to emphasize, however, that expanded pre-inspection be complementary, rather than an alternative, to the provision for effective port of entry exclusion provisions for those aliens who continue to evade the pre-inspection system and, on arrival in the United States, present a fraudulent application for entry. Where H.R. 1153 contemplates reliance on the current system of deportation of such aliens, as opposed to the exclusion provisions of H.R. 1355, the latter provides the framework for expeditious action on fraudulent applicants that is necessary to deter the increasing abuse of our humanitarian admission provisions.

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<sup>1</sup> Convention Relating to the Status of Refugees (July 28, 1951); Protocol Relating to the Status of Refugees (January 31, 1967); Sec. 243(h) of the Refugee Act of 1980 (8 U.S.C.1251)



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The use of fraudulent documentation by a person claiming to flee persecution should not of itself disqualify the alien from further consideration of a claim to political persecution if there is a reasonable basis for judging that the claim may be valid. If, for example, an alien should arrive at a U.S. port of entry from a country where the rule of law is respected and there is no pattern of human rights abuse, e.g., from the United Kingdom or Costa Rica, it is unnecessarily legalistic to treat that alien in the same fashion as a person from a country that regularly fails to respect international human rights standards.

The claim of fear of persecution of a Bosnian applicant today, on the other hand, may not be ignored without the risk of returning a legitimate asylee to conditions of persecution. But, if a Bosnian arrives from the United Kingdom, this presents a different issue. Why shouldn't that asylum claimant be sent back to the United Kingdom where neither persecution nor the threat of deportation to Bosnia is a credible concern? Why shouldn't that traveller present the asylum request there? The concept of asylum "shopping", i.e., travelling to multiple countries trying to find one that may have a lower barrier to admission, is a troubling concept for many immigration policy experts.

To deal with this growing problem, new policies are being adopted by other refugee receiving states. The United States and Canada have developed an understanding whereby asylum claimants who have entered from the other country will be the responsibility of the first country, i.e., the claimant will be excluded from pursuing the asylum application in the second country. Similarly, there are two agreements among European countries, both adopted in 1990, that have the same effect. One is the Dublin Convention, signed by European Community members<sup>2</sup>, and the other is the Schengen Agreement, which was adopted by Benelux and other European countries<sup>3</sup>. The European Community countries have adopted a position on "manifestly unfounded asylum claims" which calls for the application of "accelerated procedures" to screen out these cases. Germany is in the process of enacting a system of this nature for asylum applicants from "safe" countries.

The legislative initiative in H.R. 1679 appears to represent a major step toward gaining control of and eliminating the asylum backlog by providing for one expeditious hearing on *nonrefoulement* and a single court review on appeal of the merits. It would also discourage

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<sup>2</sup> Signatories are France, Germany, Italy, the United Kingdom, Spain, Belgium, Greece, the Netherlands, Portugal, Denmark, Ireland, and Luxembourg.

<sup>3</sup> Signatories are Belgium, Germany, France, Italy, Luxembourg, the Netherlands, Portugal and Spain.

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illegitimate claims to asylum and help to remove the magnet that current practices have for attracting spurious claimants who abuse the principle of refuge.

An aspect of the proposed *nonrefoulement* system that is troubling, however, is the concept that the Attorney General would be able to reduce the workload by designating classes of aliens presumed to be protected from deportation. This would not appear to be a realistic recourse for relieving the workload induced backlog, because such a determination would act as a standing invitation to others in the class to come to the United States. When there have been many fraudulent claims to asylum from countries like Haiti and China, even though substantial numbers of grants to asylum have also been made, why would we want to give applicants the advantage of a presumption of *nonrefoulement*? A workload reduction would be achieved only at the expense of the admission of many questionable applicants. It would make it easier for applicants to gain fraudulent entry. The burden of proof should remain with the claimant.

Finally, it is unclear whether the proposed *nonrefoulement* officers would be an entirely new corps of INS specialists. This might duplicate the functions of the increasingly professionalized INS inspectors and of the special corps of INS asylum officers. Would not the asylum officers, who have already received special training on foreign country conditions and asylum law, perform the *nonrefoulement* function well and at less additional expense?

An additional set of circumstances, not addressed in any of the current pieces of legislation to plug the asylum loophole, involves consideration of what alternative the asylum applicant had available for seeking admission into the United States. If the applicant had access to a U.S. consular official or an official of the U.N. High Commissioner for Refugees in his or her home country or in a country which he or she entered prior to arriving in the United States to whom that traveller could appeal for treatment as a refugee, it is reasonable to presume either that the asylum applicant (A) did not apply because the claim of political persecution would not stand up to scrutiny, (B) was found ineligible, or (C) still would be able to pursue this route if excluded and sent back to the country of travel origination. Haitian boat people are being dealt with in this fashion at the present time. If they are intercepted in route to the United States they are returned to Haiti to present their case for admission to consular and refugee officers assigned to that country.

Other cases might arise, however, in which the applicant for entry travelled directly from or in continuous transit from a country where these alternative means of seeking refuge do not exist. In those cases, the Asylum Reform Amendments (H.R. 1355) provide a screening process

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under the jurisdiction of the Immigration and Naturalization Service to evaluate the claimant's request for political asylum protection.

As requests for political asylum also come from aliens already in the United States, either legally or illegally, as well as from those at a port of entry, it is appropriate that the legislation also provide a similar screening mechanism for expeditious determination of the validity of these belated requests for protection. The U.S. national interest will be ill served if these requests are not carefully and expeditiously screened to identify and exclude those who are using changed political circumstances in the home country as a pretext for a back door route to immigration to the United States.

Those who entered the United States illegally represent a particular set of circumstances. If they entered the United States at a time when political conditions in their home country were stable, they may be presumed to have entered this country simply to bypass legal immigration procedures. Even if there has been a subsequent political upheaval at home, they were not party to it and, in most cases, may be presumed not to be targets of persecution if they were to return home. As particular international circumstances will vary, this issue must be examined in light of the applicant's claim and the local conditions. The H.R. 1355 Asylum Reform Amendments meet this test fairly by providing for exclusionary hearings for illegal aliens who have been in the United States for less than a year.

The Center for Immigration Studies applauds the Subcommittee's examination of procedures to close the loophole of the abuse of political asylum provisions in the law by persons seeking to enter the United States outside of the normal immigration and refugee admission procedures. The pattern of escalating abuse makes it clear that if action is not taken expeditiously it will stand as an open invitation to an increasing number of fraudulent applicants as well as an avenue for easy entry for persons who may represent a threat to our society.

APPENDIX 5.—PREPARED STATEMENT OF ANTONIO J. CALIFA, LEGISLATIVE  
COUNSEL, ON BEHALF OF THE AMERICAN CIVIL LIBERTIES UNION

We commend the Subcommittee and the Chairman for addressing asylum reform. We appreciate the opportunity to offer our comments on this important matter.

The American Civil Liberties Union (ACLU) is a membership organization with approximately 300,000 members. The ACLU has a long history of protecting civil rights and civil liberties, and has played an active role in matters involving immigration and asylum. Our Immigrants' Rights Project has been in the forefront of litigation challenging the INS' failure to comply with the 1980 Refugee Act and the regulations promulgated thereunder. For example, in the landmark class action lawsuit, ABC v. Thornburgh, ACLU attorneys challenged INS's biased asylum adjudications of Central American asylum applicants, winning an opportunity for over 200,000 applicants to reapply for asylum and obtain a fair, unbiased adjudication of their claims. Most recently, ACLU attorneys have played a leading role in challenging the forced repatriation of Haitian asylum seekers and the indefinite detention of some of these refugees on Guantanamo.

The ACLU offers the following comments on bills pending before the International Law Subcommittee of the House Judiciary Subcommittee. The bills are H.R. 1355, the "Exclusion and Asylum Reform Amendments of 1993", H.R. 1679 the "Asylum Reform Act of 1993" and H.R. 1153 the "Immigration Prainspection Act of 1993."

Background

Law professors and judges are fond of saying that hard cases

make bad law. If there is a legislative version of that adage perhaps it is that dramatic events make bad law. Recent criminal acts allegedly committed by people who abused the asylum system and exaggerated news reports of abuses at John F. Kennedy International Airport have fueled calls for asylum reform.

Although the ACLU is in favor of reforming and improving the asylum system, we believe that two of the bills are steps in the wrong direction, and create substantial civil liberties concerns. Further, we join other groups testifying before this distinguished Subcommittee in endorsing administrative over legislative change. The INS published final regulations concerning asylum in 1990. These regulations, which were the product of years of advocacy by organizations such as the ACLU, provided for the first time that asylum adjudications would be conducted by trained asylum officers without enforcement responsibilities and under Central Office specialized supervision. The process that began by passage of the Refugee Act in 1980, interpretation of that Act by the Supreme Court in 1987 in Cardoza-Fonseca, and creation of this specialized asylum corps in 1990 is continuing. To radically change these positive developments by totally restructuring asylum policy would be a mistake.

#### The Exclusion and Asylum Reform Amendments of 1993

Cong. McCollum and others have introduced H. R. 1355, the Exclusion and Asylum Reform Amendments of 1993. (hereinafter McCollum). With very limited exceptions, this bill would summarily exclude persons seeking entry into the United States, if these



persons use fraudulent documents or have no documents. Essentially the bill creates an irrebuttable presumption that any individual who attempts entry to the United States without proper documents is not entitled to asylum.

The requirement of summary exclusion for all those without proper documents ignores the harsh realities faced by asylum seekers. Many asylum seekers cannot ask their home governments for travel documents, for the simple reason that their home governments are persecuting them. The hearing record is replete with instances where adherence to McCollum would have resulted in the return of asylum seekers to their home country, where they would be faced with imprisonment, torture or death.

Moreover, denial of asylum premised solely on an individual possession of fraudulent documents runs contrary to accepted international practice and to administrative agency decisions. See Matter of Pula 19 I. & N. Dec. 467, 473 (BIA 1987). The INS has submitted testimony which states that H.R. 1355 clearly includes persons in the summary exclusion process "for whom summary proceedings would seem clearly inappropriate."

Any summary exclusion process should consider the totality of the circumstances faced by the asylum applicant. To make possession of false documents, or the possession of no documents, the sole determining factor would be fatal to a true asylum process.

Denial of Administrative or Judicial Review

In addition, McCollum would eliminate any meaningful review of the decision to exclude. Instead, the decision to exclude rests with front-line examiners vested with unreviewable discretion. The ACLU strongly opposes the denial of due process inherent in the McCollum bill. The ACLU is especially concerned with the McCollum bill's attempt to limit habeas corpus.

Detention

Finally, the bill requires the Attorney General to detain every person who is neither obviously admissible nor summarily excluded. This type of mandatory detention is unnecessary and inhumane. It is especially questionable given the high cost of detention, the limited detention space available, and negative consequences of detention on asylum applicants ability to obtain counsel and pursue their claim. There are many asylum seekers who do not pose a threat to the community, and who are not a threat to abscond. Such people should be allowed into the community with perhaps some minimal amount of supervision or requirement to notify the INS of their whereabouts.

H. R. 1679- The Asylum Reform Act of 1993

This bill sponsored by Chairman Mazzoli essentially eliminates asylum and replaces it with a new category, "nonrefoulement" with a higher standard of proof. H.R. 1679 would also require asylum seekers to file a notice of intent to seek asylum within 7 days of arrival in the United States, and to file a petition for asylum within 30 days of arrival.

### Higher Standard of Proof

In 1980, Congress passed the Refugee Act and adopted a standard for determination of whether asylum should be granted, a "well-founded fear of persecution." A more rigorous standard applies when the question is not granting of asylum, but "withholding of deportation" of aliens. Whereas asylum is discretion, "withholding of deportation" is mandatory. The more rigorous standard demands that the applicant show "a clear probability of persecution." INS v. Stevic 467 U. S. 407 (1984). The United States Supreme Court has determined that Congressional intent in passage of the 1980 Refugee Act was to adopt the less rigorous "well founded fear" test for use in asylum cases, INS v. Cardoza-Fonseca, 480 U. S. 421 (1987).

The Mazzoli bill would reject the "well founded fear" test, and substitute the more rigorous "clear probability" standard. This approach has several problems. First, there is no connection between the "abuses" of the asylum system and imposing a higher standard of proof. Not one shred of evidence has been offered to show that people who would qualify under the "well founded fear" test have abused the system. The Mazzoli bill would punish people who have a well founded fear of persecution but who cannot objectively show that it is more likely than not that they will be persecuted. If the Mazzoli bill is adopted, Congress will be stating explicitly that it is forcibly returning people who have a well founded fear to their home countries.

Second, rejection of the well founded fear standard would

flout our international obligations. The international standard is the well founded fear standard, and Congress passed the 1980 Refugee Act to bring American law into conformity with international requirements. The Mazzoli changes would represent a step backward from the 1980 Act with no discernible benefit. Third, the Mazzoli bill could cost the United States its leadership position in matters involving refugees. As the Department of State testified before the Subcommittee on April 27, 1993.

In particular, we are wary of the proposal to change the standard of proof applicable to affirmative claims in the U.S. away from the well founded fear of persecution standard. It is not all clear to us that the asylum abuse problem is related to the legal standard employed. We suggest, however, that such a change could negatively reflect on U. S. leadership on refugee issues in the global community and could have a negative impact on the practice of other states or our ability to enter into burden sharing arrangements with other states.

#### Strict and Inflexible Deadlines

The Asylum Reform Act would also require a notice of intent to file an application for "nonrefoulment" within seven days of entering the United States. This is needlessly harsh, and does not recognize the reality faced by asylum seekers. Someone who has had to flee their home can hardly be expected to have mastered the intricacies of American immigration law. To leave such persons outside the refugee process for failure to meet a seven day deadline is punitive.

In addition, the Asylum Reform Act of 1993 would impose new fees on asylum applicants. Given the realities of asylum seekers, any requirement that applicants pay a fee to apply for asylum must be closely examined. Refugees usually leave their countries

hurriedly and with only the barest necessities. Any requirement of a fee must provide for generous waivers to ensure that applicants who are truly in need of protection are not precluded from obtaining this relief.

H.R. 1153 - The Immigration Pre-Inspection Act of 1993

This bill, sponsored by Cong. Schumer, has three main provisions. First, it would establish pre-inspection stations in certain foreign airports with the heaviest volume of U. S. bound traffic. At these sites, immigration officers would conduct screening of applicants. Second, the visa waiver pilot program would be made permanent. Third, airport processing would be expedited through the use of electronic manifests, rendering personal examination and inspection interviews discretionary, shortening the inspection time standard, and providing for expedited citizen processing.

The ACLU has relatively minor comments on the Schumer bill. The pre-inspection stations should not be created in countries from which refugees are currently fleeing to avoid persecution, or from which refugees are at risk of being returned to countries where they would face persecution.



APPENDIX 6.—ANSWERS TO QUESTIONS SUBMITTED BY REPRESENTATIVE  
MCCOLLUM TO MR. WARD



United States Department of State

Washington, D.C. 20520

RECEIVED

AUG 12 1993

August 8, 1993

IMMIGRATION

Dear Mr. Chairman:

Following the April 27, 1993 hearing at which James Ward testified, additional questions were submitted for the record. Please find enclosed the responses to those questions.

Sincerely,

Wendy R. Sherman  
Assistant Secretary  
Legislative Affairs

Enclosures:  
As stated.

The Honorable  
Romano L. Mazzoli, Chairman,  
Subcommittee on International Law,  
Immigration, and Refugees,  
Committee on the Judiciary,  
House of Representatives.

Q. The State Department's visa lookout system is supposed to be the front line of defense against excludable aliens who seek to travel illegally to the U.S. on a visa obtained at our overseas posts. Yet there are press reports that Sheik Abdel Rahman received his visa through "a strategically placed friend, a local hire, inside the U.S. Embassy in Khartoum, after having been denied in Cairo and London." (U.S. News and World Report, April 12, 1993, page 24)

In the last five years how many cases have there been of visas being issued based upon bribery or favoritism involving foreign service nationals working in our embassies in the processing of visa applications?

Is this a major problem or shortcoming of the overseas visa lookout system?

What is being done to address concerns over inadequate controls over visa issuance?

A: The Office of Inspector General is currently investigating questions arising from the issuance of nonimmigrant visas to Sheik Omar Abdel Rahman.

According to the Bureau of Diplomatic Security (DS) and the Office of Inspector General (OIG), from 1988 to the present there have been approximately 264 investigations of Foreign Service nationals (FSNs) who were alleged to be involved in improper processing of visas.

DS reports that 67 FSNs involved in processing visas were fired for malfeasance. Ten other FSNs resigned during the course of visa fraud investigations. Nineteen FSNs were prosecuted locally by host country authorities.

The nonimmigrant visa issuance system has internal control procedures which help to ensure the integrity of the visa issuance process. At posts which use the microfiche system, our oldest method of namechecks, the consular officer normally relies upon an FSN to check the names of applicants. The consular officer is required to spot-check names the FSN has checked to see if any results in a "hit," i.e., is in the lookout system.

At posts with on-line access to the namecheck database, all namechecks are printed out with the results, and the consular officer is required to check all "hits" before authorizing issuance of the relevant visas. Our most advanced system, the Machine Readable Visa (MRV) now in use at 52 posts, will not permit a visa to be issued unless the namecheck has been performed and has been acknowledged by a consular officer.

The implementation of the MRV system at all visa issuing posts is a high priority for the Department. About fifty percent of all nonimmigrant visas issued today are produced by the MRV system.

Q. Does the U.S. consular officer who actually issues the visa perform the visa lookout check or is this function delegated to foreign service nationals? If delegated, is this routine or usual? Could the U.S. consular officer perform the visa lookout herself in most instances?

A. Visa lookout checks are routinely performed by Foreign Service National employees. At posts issuing the Machine Readable Visa, if there is a lookout "hit" the visa cannot be issued without a positive verification and action by a U.S. consular officer. At posts using other on-line computer namechecks, all names checked are printed out with the results. Regulations require the consular officer to check all "hits" before authorizing issuance of the visas. At posts using the microfiche namecheck system, the consular officer relies upon the Foreign Service National employee to perform the namecheck. The only internal control in this system is for the consular officer personally to spot-check names, or to submit names of known ineligible aliens to be checked, to see if those names result in "hits."

The workload at consular posts would make it virtually impossible for consular officers to perform all visa namechecks personally at current staffing levels.

Q. I understand that 88 overseas consular posts use an outdated and slow-to-update microfiche card system. Since INS estimates the cost of detention and administrative expenses for each illegal alien in the U.S. is \$30,000, doesn't it make sense for State to have a modern automated system in most overseas posts in order to prevent entry into the U.S?

A. Yes, it makes sense. Unfortunately there is no tradeoff between INS' detention budget and State's automation budget. Actually 105 posts use the microfiche lookout system, while 110 posts have access to the on-line automated system. An additional 18 posts use a stand-alone version of the automated lookout system. Our plans call for all posts to have automated namecheck systems by the end of fiscal year 1995.

Despite the relatively large number of posts still using microfiche, about 92% of all visas processed worldwide are processed at posts with automated lookout systems. Posts equipped with microfiche generally are lower volume posts in remote locations.



Q. Sheik Abdel Rahman, who State admits was issued a visa in error, traveled in and out of the U.S. without being denied re-entry by the INS despite the fact that he was on the lookout system for known terrorist links. This looks like a total breakdown in coordination of [sic] between INS and State systems to protect the U.S. from known terrorists.

What happened? How integrated is the State Department's information with information available to INS and the intelligence agencies? Is State working to improve coordination with these other agencies?

A. The information on Sheik Abdel Rahman was made available to the INS and was in their lookout system at the time of his subsequent entries into the U.S. The Department of State's lookout system is interconnected with the interagency system used by INS at ports of entry, and we transmit about 300 records a day to that system.

The Department participates in the interagency Border Security Working Group chaired by the National Security Council to improve coordination and exchange of information among concerned agencies.

Q. Does the Bureau of Consular Affairs have access to NCIC or the FBI's Criminal History Records for visa screening? If not, why not? If not, doesn't this limit the consular officer's ability to properly screen known criminals from entering the United States?

A. The Bureau of Consular Affairs does not currently have access to NCIC or the FBI's Criminal History Records. Prior to 1991, the FBI performed namechecks on all intending immigrant aliens who had lived in the U.S. for six months or longer after the age of 16 years. However, the FBI decided in 1991 to charge the Department of State for this service. The Department had no resources with which to pay, and no way to recover the cost from fees paid by the applicant, and so the FBI namechecks were discontinued. Visa refusals for criminal related activities dropped by nearly 50% following the discontinuation of FBI namechecks.

The NCIC system identifies persons who are currently wanted by police authorities, and does not routinely disclose criminal history records. Visa denials on criminal grounds normally must be based on convictions or admissions, not on charges or warrants. However, it could be of overall law enforcement benefit for consular officers to have access to NCIC.

Q. How long has the "lookout list" been in existence? How is it compiled and enforced? What is CLS (classified lookout system) and which posts have access to it?

A. The lookout list has been in existence since at least the 1940's and access to it has been automated since 1966 at posts with adequate telecommunications capability. CLS is an acronym for Consular Lookout System and is synonymous with CLASS, Consular Lookout and Support System. 110 posts have on-line access to CLASS. Another 18 posts without direct telecommunications links to the central database have the automated Distributed Name Check (DNC) system, a stand-alone system using a customized version of the CLASS database.

The Consular Lookout System database, comprising about three and one-half million records, is compiled from information based on actual visa refusals, as well as information furnished by the INS and other U.S. government intelligence, security, and law enforcement agencies. It includes the names of aliens who are known to be or are believed possibly to be ineligible for visas under the provisions of the Immigration and Nationality Act.

Regulations require that the names of all aliens be checked against the lookout system before they may be issued visas. If the namecheck shows that the applicant is believed possibly to be ineligible, a visa may not be issued without consulting the source of the lookout entry so that the information upon which the entry was based may be fully evaluated.

Q. What is the status of the Machine Readable Visa (MRV) program? How many posts have it and how many are scheduled to get it?

A: The MRV program continues to press forward. There are currently 52 MRV sites in operation, accounting for over half of our total nonimmigrant visa issuances worldwide. We plan to have equipped at least 16 more posts with MRV by the end of fiscal year 1994. A new, PC-based, stand-alone version of MRV suitable for posts with limited telecommunications capability is now at the beta test stage with the first two overseas installations completed in July 1993.

Q. I understand that your Inspector General has concerns about the (MRV) program. Do you know what those concerns are, and, if so, what is being done to address them?

A: The Inspector General (IG) is concerned that the security features of the program are not completely implemented, there are weaknesses in internal controls of the program's supplies and equipment, and planning for the program's funding and staffing has not been adequate. Despite these concerns, the IG's report found the MRV program to be a sound concept, though labor-intensive and costly. The report concluded that the best course for the Department is to continue implementing the MRV program.

MRV is a large, complex program that has experienced growing pains. We believe that the program has been successful, and agree with the IG that MRV should continue. We also agree that various elements in the program should be strengthened. Key elements of the report, and actions taken, include:

- A significant portion of the recommendations concerned control and management of visa foils, equipment and supplies. The majority of these items have been corrected and the remainder are being addressed.
- A number of known software concerns were documented. Many of these will be corrected in a new software release due late this year; the remainder will be addressed as part of our software migration program.



-- The OIG recommends that all MRV's contain photos (now required only for certain nationalities) and that we invalidate outstanding old-style visas. These ideas have large resource implications. We are therefore reviewing these proposals, but are not convinced that they are practical at this time.

We continue to address MRV funding issues through the budget process. As recommended by the IG, we are pursuing legislative action to use visa fees to help fund the program.

Q. What are the security features of the new passport?

A: The new document contains greatly improved safeguards against tampering and alteration, to combat passport fraud by terrorists, drug traffickers and alien smugglers. Examples of security features include:

- The use of nine inks to deter counterfeiting attempts using color copiers or electronic color separators.
- Microline printing with a six-color press.
- A graphic design unique to each page (the Seals of the 50 states in the order of their admission) incorporating invisible printing with machine-readable ink to deter attempts at page substitution.
- Enhanced binding thread incorporating an invisible security tag detectable with ultra-violet light.
- A new type of laminate containing an optically variable device known as a kinegram (kinefilm) that makes photo substitution more difficult.

-

-- Laminate printed with ink which transfers to both the passport paper and photo during lamination and can be seen in both the visible and invisible spectra.

-- A machine-readable bio-data page with a security printed tint that will deter data alteration.

-- A cloth cover which, combined with the laminate, addresses our largest fraud problem - photo substitution.

We operate an ongoing program designed to make the U.S. passport more tamper-resistant. Some of the improvements planned for the future include digitized photographs and improved paper containing threading and more sophisticated watermarks.

(For security reasons, this description of features is not all-inclusive.)

Q. How easily could a fraudulent photo be substituted for an original? Can the protective covering on the photo/data page be removed, items changed, and the covering replaced?

A: Our use of the kinefilm with a cloth cover has made the new passport more resistant to photo substitution. Since the April 27 demonstration of the difficulty in removing the laminate from the new passport without destroying the book, the Immigration and Naturalization Service has uncovered some examples of crude photo-substitution in the new passport.

We believe that the hard-copy passport photo must be eliminated in order fully to address the problem of photo substitution. Photo digitization is the most mature and reliable technological choice to replace the passport photograph. Indeed, other countries, most recently Japan, have adopted this passport technology and have overtaken the U.S. as a leader in this critical area of border control.

The process of photo digitization is technically simple but the product is extremely difficult for malefactors to duplicate. The technology exists to produce a digital image of a standard passport photograph and to transfer that image into the U.S. passport. The photo then is no longer a separate part of the passport but becomes an interdependent component of the passport paper, cover material, inks, and

laminate. Therefore, any attempt to tamper with the image requires defeating multiple security features physically embedded in the passport. An individual attempting to substitute a digitized image must, in effect, attempt to substitute the other material components of the passport as well.

The Department has enlisted the assistance of the National Institute Of Standards and Technology (N.I.S.T.) to develop such a prototype system at the most reasonable cost feasible. N.I.S.T. is now in the process of awarding a contract for a prototype digitized photo workstation. We estimate that domestic implementation of a digitized photo system in Fiscal Year 1994 will cost \$3.3 million, which can be passed on to the applicant as a legitimate component of the fee. (Note: current revenues for the U.S. Treasury from passport fees may exceed \$240,000,000 this year.)



Q. What process or procedures were used in developing the new passport?

A: In May 1989 a joint agency committee was formed to evaluate the passport and make recommendations for improving the document. Committee members included representatives from the FBI, CIA, INS, Customs Service, Government Printing Office and State Department. Each member was selected for his or her expertise in document security. After a year's work, the committee issued a series of recommendations. The new passport was designed in accordance with those recommendations.

Q. What steps have been taken to inform the affected agencies and private entities affected by the changes in the passport?

A: Whenever we introduce a new passport, we take the following steps:

We send a diplomatic note describing the features of the new passport, and two samples of that document, to all accredited embassies and missions in Washington.

We send a memo describing in greater detail the features of the new passports to INS and the Customs Service. Those services also receive several hundred samples of the new passport for distribution to U.S. border control officers.

We also send press releases describing the new passport to the electronic and print media.

APPENDIX 7.—REVISED COPY OF PREPARED STATEMENT OF RICHARD E. NORTON, MANAGING DIRECTOR, FACILITATION, AIR TRANSPORT ASSOCIATION

My name is Richard E. Norton, and I am the Managing Director of Facilitation for the Air Transport Association of America (ATA). ATA represents the 18 carriers that handle over 95 percent of the scheduled commercial airline traffic in the United States, and that provide air service to over 80 foreign countries. ATA and its members deeply appreciate this opportunity to again express our views on immigration issues that affect our industry. We view this as a key step in our efforts to gain support for legislation that would streamline tourism to the U.S., and to draw attention to some of the policies of the Immigration and Naturalization Service that can be corrected by statute.

THE NEED FOR LEGISLATION

Last year ATA testified before this committee about the urgent need to modernize immigration laws. Specifically, we advocated the adoption of efficiency-oriented, revenue-neutral changes to the Immigration and Nationality Act (INA) that would speed up airport inspections and improve control of our borders. ATA was joined in this endeavor by a

coalition of groups that is fighting to protect what has become this country's biggest export: the \$53 billion tourism industry. The interests represented along with ATA -- the American Association of Airport Executives, the Airports Association Council International, and the Travel and Tourism Government Affairs Council -- remain convinced that these progressive changes to the Act must be the next stage of our joint efforts to protect the positive trade balance that this sector generates.

Subsequent to the March 1992 hearing, the subcommittee addressed this need by passing H.R. 5555. While that legislation failed to pass the Senate, the need for these reforms persists. The coalition believes now more than ever that we must act to give INS the tools it needs to unsnarl the slow, antiquated border inspection procedures that undermine the image of the U.S. as a desirable destination, divert resources from efforts to interdict undesirable entrants and inhibit the industry's ability to successfully compete in a market that is extremely sensitive to perceptions of inconvenience and inhospitality. We are convinced that the latest version of this legislation, H.R. 1153 as introduced by Rep. Charles Schumer, will accomplish these goals.

## BACKGROUND

Several years ago the industries involved in the coalition worked hard to give INS the resources it needed by supporting the Immigration User Fee. The success of that effort is

well documented; what was just seven years ago an under-funded, \$40 million appropriation has grown into a huge program that takes in over \$200 million per year in spendable revenue. In 1991 we pressed INS to spend that money on hiring additional personnel, which resulted in a 30 percent increase in the Service's inspector work force -- but which has not adequately responded to current needs.

Still missing, however, are the legislative reforms that are needed to make the inspections process work efficiently. Other nations have been quick to realize that tourists can be welcomed with painless, expedient entry procedures that help secure a greater share of the international travel and tourism market but do not jeopardize enforcement. In order for the U.S. Government to accomplish the same result, we believe legislation is absolutely necessary. The existing framework of the INA allows little room for modern innovation. The Service is left with a self-defeating strategy that is confined only to advocating more user fees and staff increases. If all of those involved are constrained to this old framework, it means that no airport can be big enough and no staff large enough to accommodate the expected doubling of international traffic to the United States within the next decade.

Instead of facing this bleak prospect, the industry endorses changes to the law that will allow citizens and visitors to be expedited without jeopardizing the government's enforcement mission. Our recommendations are directed at helping INS to perform its tasks more efficiently, providing the tools to protect our borders and facilitating air passenger entry into the country. These laws -- most of which have been unchanged for four decades -- are ripe



for the sorts of changes that will allow INS to join the ranks of other enforcement agencies that are legally able to take advantage of modern technology and up-to-date law enforcement techniques.

This subcommittee is well aware that it has been all too common for U.S. citizens and foreign visitors to be greeted upon arrival here with an arduous process that can take several hours. Lengthy waits aboard aircraft are too often followed by hour-long lines in crowded arrival halls, as passengers endure a time consuming, labor intensive immigration inspection. This situation is caused by the fact that immigration processing requires all passengers to be handled identically, even though less than a fraction of one percent are of interest to federal agencies. Such a practice induces a vicious circle of wasted resources. Since INS is unable to adopt better methods used by sister agencies, it instead must rely on work force increases alone to accomplish its mission. Airport facilities, peak arrival periods, seasonal traffic and around-the-clock operations are factors that make staffing levels the least efficient of tools -- but the only one available under present guidelines and statutes.

Airlines, airports and the government have anticipated the advent of a more contemporary inspection system by already having invested millions of dollars in hardware and software that can help INS automate the routine tasks that frustrate efficient passenger handling (the equipment, in the form of specialized document readers linked to the Customs/INS shared data base, automatically captures relevant information from travelers' passports; the devices are now in place at virtually all immigration booths here, and at many

airline check-in counters abroad). Clearly the stage is set for new, efficient techniques to take over -- when the necessary changes are made to the 40-year-old Act.

Mr. Schumer's bill addresses the need to bring the U.S. into closer compliance with the international standards it sponsored in an annex to the 1944 Convention on International Civil Aviation (the "Chicago Convention"), which is the principal instrument of international aviation law. In 1988 the United States government offered an amendment to Annex 9 of the treaty calling for contracting states to establish as a goal the clearance of air passengers through the entire federal inspection process within 45 minutes of arrival. Under this amendment, all passengers requiring not more than the normal inspection at international airports should move through all inspection agencies in less than 45 minutes regardless of aircraft size and scheduled arrival time. The U.S.-sponsored amendment was adopted on December 4, 1989. ATA members understand the concerns raised by INS that the agency would be hard pressed to comply with the 30 minute requirement that is proposed in H.R. 1153. We concur that such a provision would be unnecessary if INS takes full advantage of the other modifications that are contained in the bill, especially those pertaining to the use of electronic data and expedited processes for American citizens. Notwithstanding this view, we urge INS to embrace these changes in order to allow the other inspection agencies to have a fair share of the time available within the framework of U.S. international treaty obligations.

Necessary Legislative Changes: The Advantages of H.R. 1153

We believe that H.R. 1153 overcomes these problems by offering the following solutions:

- It expands the INS preinspection program to additional high volume overseas sites, thus reducing the burden placed on domestic arrival halls;
- It supplements preinspection with a carrier consultant program that will allow INS to provide on-site expertise to airline employees at scores of overseas embarkation points;
- It makes the visa waiver program permanent for all eligible countries, thus encouraging a higher level of tourism from major source countries. Furthermore, it eliminates the cumbersome visa waiver form that slows down passenger inspections;
- It frees inspectors from time-consuming clerical tasks and saves resources by redefining the "manifest" provision. This major change will allow airlines to submit passenger information in automated form, facilitate broader use of "machine readable" documents by other countries, and save the government millions of dollars in data entry costs;

- It modifies the definition of "inspection" to clearly allow the use of electronic data and other forms of scrutiny as the basis for the admission of passengers. This change removes language that appears to call for a personal interview of all arriving passengers, and replace it with more contemporary tools that can be used for determining admissibility; and
- It mandates that U.S. citizens be given expedited treatment by INS.

Taken as a whole this legislation will add a forceful, effective set of tools to the Immigration and Nationality Act. The industry believes that H.R. 1153 will stimulate a wide array of new programs that will act in concert to expedite airport admissions processing.

### INADMISSIBLE PASSENGERS

The enactment of H.R. 1153 in its present form will leave one critical problem unsolved. It is a matter of grave concern, since it affects carrier revenues and undermines the government's system of immigration control. We are referring to the growing number of passengers who are using the international commercial air transportation system to circumvent immigration laws. The primary culprits are those who board our flights bearing what appear to be proper documents, and then either destroy their passports or pass them off to smugglers. This is no small-scale issue; in one recent month, over 1500 illegal immigrants arrived at

New York/John F. Kennedy International Airport using this technique; hundreds more do the same at other airports around the country. INS ends up with an unidentified person on its hands, and the airlines are fined and illegally forced into the role as jailers of these alleged asylum seekers. One leak in the system is costing the industry at least \$30 million per year. The impact on the INS budget and on an orderly system of immigration is far greater: it has been through use of this elementary means that terrorists and other criminals can penetrate the system with impunity.

To halt this pattern of abuse, the industry strongly recommends that the government rethink its strategy on the deterrence of this traffic. Instead of relying on after-the-fact fines, we are convinced that airlines must be made partners with INS in a program that provides carriers with the guidance and incentives to keep unscrupulous passengers from boarding the aircraft. Under the existing system -- which is now forty years old -- "guidance" comes in the form of a \$3000 fine levied against carriers for each passenger found to be inadequately documented. Carriers are expected to learn from these errors and prevent future occurrences. This is a straightforward way of reinforcing the need to check for passport validity and the existence of a visa, but it is completely ineffective at combatting the explosive growth in fraud that the airline industry has been victimized by in the past three years.

The scope of the problem is simply too broad for carriers to solve without the active partnership of INS. Smugglers change routes and methods too quickly, and governments complicate matters by introducing new documents and requirements without informing



carriers. A good example is the new U.S. passport which was put into production this month. Not only was it completely redesigned -- with a new cover, new security features, different format -- without formal notification to the industry; it is also disturbingly vulnerable to fraud and absent security features that can be readily detected by check-in personnel. Government-provided instructions, training, even the carrier consultants and preinspection programs that are part of H.R. 1153 are welcome improvements, but limited by budget, mobility, and diplomatic hurdles. Simply put, INS cannot extend its presence to 150 airports from which a traveler can embark for the U.S. without enlisting the carriers as its principal means of deterring illicit traffic.

A compliance system that imposes dual responsibilities on carriers and government is not a new concept. A version by Customs has minimized drug smuggling by commercial airliner; the FAA security program has proven to be highly effective at ensuring in-flight security; and immigration screening programs developed by Canada and the United Kingdom have demonstrated how cooperative agreements with airlines can dramatically reduce abuses by improperly documented passengers.

The most effective means of implementing a similar program in the U.S. would be to authorize the Attorney General to mitigate fines in recognition of carrier interdiction efforts. Under such a regulation, carriers would be told by INS what steps to take in order to screen out passengers who were about to abuse the immigration laws. If carriers were to follow the guidelines, they would in turn be certified as having complied with the standard of diligence

required by the principal fines statute (8 U.S.C. 1323), which penalizes airlines \$3000 for each passenger who arrives in the U.S. without proper documents. The program would operate to the benefit of INS and the airlines: INS would achieve a much greater measure of control over inadmissible passengers by formally prescribing carrier screening methods that would be in place at all embarkation points to the U.S., and airlines would avoid unnecessary fines and detention costs.

As much as this trend has grown in the past few years, the potential for further deterioration of border controls is incalculably large if the experience of other countries is a fair yardstick. We urge this subcommittee to add language to the Immigration and Nationality Act (see attachment) that would permit the adoption of such a preventative program before the situation worsens.

#### SUMMARY

ATA member carriers join the travel industry coalition's effort to make sense of our national policy on international tourism, and support H.R. 1153 as the best means of removing the impediments to healthy growth of this most important source of foreign exchange. To reinforce the statements we made to the subcommittee last year, the stakes are too high for the U.S. economy for us to be complacent about the cumbersome, decades-old admissions process with which we are saddled. This is not a budget issue. The intelligent

use of existing resources will be more effective than an infinite supply of immigration officers, who cannot impede the flow of illegals by continuing to employ what we have referred to in previous testimony as a Maginot Line strategy -- something that can be circumvented with a minimum of inconvenience. Such an approach to facilitation is an enduring impediment to a prospective visitor, however; it does not take personal experience but merely word of mouth to convince a legitimate tourist that he or she would be better off going elsewhere.

For this reason we strongly urge the subcommittee to take an aggressive role in ensuring that the U.S.'s immigration policies match its economic goals; other countries have successfully balanced these interests, and we can as well. With your help in passing H.R. 1153 with the modifications we have recommended, the U.S. economy will continue to benefit from growth in travel and tourism.

At the end of the bill, add the following new section:

**Sec. \_\_. Civil Penalties.**

(a) IN GENERAL.--Section 273 of the Immigration and Nationality Act (8 U.S.C. 1323) is amended--

(1) by striking "the sum of \$3000" and inserting "a civil penalty of \$3000" both places it appears;

(2) in the second sentence of subsection (d) by striking "a sum sufficient to cover such fine" and inserting "an amount sufficient to cover such civil penalty";

(3) in the second sentence of subsection (b) by striking "a sum equal" and inserting "an amount equal";

(4) by striking "sum", "sums", and "fine" each place any such word appears and inserting "civil penalty"; and

(5) by adding at the end the following new subsection:

"(e) A civil penalty under this section may be mitigated and the imposition of the penalty waived under such regulations as the Attorney General shall prescribe in cases in which--

"(1) the carrier demonstrates that it had screened passengers for travel documents on the flight or other conveyance in accordance with procedures prescribed by the Attorney General, or

"(2) there exist other circumstances that would justify the remission or mitigation of the penalty."

(b) EFFECTIVE DATE.--The amendments made by this subsection shall apply with respect to aliens brought to the U.S. 60 days after the date of enactment of this Act.

APPENDIX 8.—PREPARED STATEMENT OF LLOYD LOCHRIDGE, CHAIR,  
COORDINATING COMMITTEE ON IMMIGRATION LAW, ON BEHALF OF  
THE AMERICAN BAR ASSOCIATION

Mr. Chairman and Members of the Subcommittee:

I very much appreciate this opportunity to present the views of the American Bar Association regarding asylum policy and inspection procedures.

The United States immigration policies have been passionately debated in recent years and come under heightened scrutiny in recent months. The asylum system in particular has been identified as being inefficient and vulnerable to abuse.

The immigration adjudications, enforcement and court systems suffer from long-term mismanagement and underfunding.<sup>1/</sup> As a result, American citizens, institutions, permanent residents and others who seek benefits under the immigration law encounter backlogs of several years and related hardships. Meanwhile, the delays provide opportunities for others to manipulate the system.

The legal community is concerned that recent events and economic pressures coupled with the backlogged asylum and immigration court systems make legislative proposals to eliminate important rights and due process protections seem more attractive. The Congress should be wary of proposals that attempt to reduce asylum abuse and achieve budget savings by

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<sup>1/</sup> GAO, Immigration Management: Strong Leadership and Management Reforms Needed to Address Serious Problems (Jan. 1991); GAO, Financial Management: INS Lacks Accountability and Controls Over Its Resources (Jan. 1991); GAO, Information Management: Immigration and Naturalization Service Lacks Ready Access to Essential Data (Sept. 1990); GAO, INS Bonds Delivery: Stronger Internal Controls Needed (Mar. 1988).



"streamlining" the asylum and border inspection programs. Providing access to justice is fundamental to preservation of a democratic society and effective law enforcement.

The federal agencies charged with administering the immigration and refugee laws can improve the processes to make them more efficient. But they also require sufficient resources to enforce and administer the laws effectively and fairly. To the extent organized crime is engaged in alien smuggling, U.S. law enforcement and intelligence agencies need to work cooperatively with foreign governments to eliminate criminal enterprises that traffick in human beings and fraudulent documents. Denying due process to the desperate victims of oppressive regimes, however, should not be the centerpiece of our legislative efforts.

The United States enacted the Refugee Act of 1980 to meet its humanitarian obligations under domestic and international law to protect refugees fleeing persecution in their homelands. Asylum is a precious benefit and the exclusive remedy for refugees in the United States, or at a border, who face individualized persecution if forced to return home. Persons entitled to asylum may, by definition, face torture, imprisonment, or death as a result of an erroneous decision, so constitutional standards of due process mandate a ~~broad~~ range of procedural safeguards to minimize the possibility of error and ensure a fair and accurate determination.

For many years, some criticized the INS adjudications as being unfair and the process as providing unreliable results. A number of class action lawsuits were brought against the agency claiming discriminatory treatment of applicants based on nationality. In response, the asylum program was overhauled and

significantly improved just two years ago. An independent corps of asylum officers was hired and trained and regulations incorporating the appropriate legal standards were promulgated. 8 C.F.R. 208 (July 27, 1990).

An individual who is not in expulsion proceedings may apply affirmatively for asylum with the Immigration and Naturalization Service. The process is intended to take 90-120 days from application to final decision. If an asylum adjudication requires more than 90 days for a decision to be reached and the application is determined to be non-frivolous, the applicant can receive work authorization while the claim is pending. Persons who arrive at U.S. airports without valid travel documents claiming to be political refugees are generally placed into exclusion proceedings and may not avail themselves of this process (unless the INS district director determines otherwise).<sup>2/</sup>

Although the affirmative process may require further improvement,<sup>3/</sup> it provides a vital avenue of relief to persons who cannot return to their countries owing to political conditions. 36.8% of the cases decided by the INS last year were approved. Unfortunately, there was a backlog of 141,000 cases even before the new asylum offices opened in April 1991, and backlogs accumulate every day. Many new asylum applications are attributable to the settlement of litigation, international

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<sup>2/</sup> Aliens in exclusion or deportation proceedings may apply for asylum only before an immigration judge in an adversarial immigration court hearing. There are presently 85 immigration judges. These judges completed 16,726 asylum cases in FY92.

<sup>3/</sup> See National Asylum Study Project, An Interim Assessment of the Asylum Process of the Immigration and Naturalization Service (December 1992) (lack of legal reasoning, application of incorrect burdens of proof, lost files, inadequate staffing.)

upheaval, and U.S. government policies that require the filing of an asylum application.<sup>4/</sup>

Critics assert that the possibility of work authorization while an application is pending invites unfounded claims that overburden the system. They have proposed denying work authorization, "streamlining" the system by reducing due process protections, or limiting access to asylum in various ways that could endanger refugees' lives.

The Association urges Congress to resist the types of measures proposed in S.667, H.R.1153, H.R.1355 and H.R.1679, which would impede claims by bona fide asylum applicants. The most appropriate solution for deterring frivolous cases is to allocate sufficient funding and personnel to ensure prompt asylum adjudications followed by institution of deportation proceedings for ineligible applicants. If applicants were to receive fair decisions within 90 - 120 days of application, as intended, the incentive to apply for work authorization would disappear and the volume of asylum applications would, no doubt, decrease. Prompt adjudications would also benefit bona fide refugees who now anxiously wait up to several years for a decision, during which they are separated from family members whose lives may be endangered abroad. Timely adjudications would also be fairer to

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<sup>4/</sup> Asylum application filings declined in FY1991 to 60,600 from more than 101,000 in FY1989 and 73,000 in FY1990. Asylum filings increased in FY1992, but they were significantly lower than the INS had projected and roughly half (50,000) were filed under the Settlement Agreement in American Baptist Churches v. Thornburgh, Civ. No. C-85-3255 (N.D. Cal. Dec. 19, 1990). See National Asylum Study Project, Interim Assessment at 18. In addition, all 11,000 Haitians who were screened for asylum and admitted from Guantanamo Bay were required to file asylum applications upon arrival in the United States.

well-meaning applicants who do not qualify under our stringent laws but who acquire equities and become integrated into our society while their applications are pending, making eventual rejection and departure all the more difficult.

Canada had an asylum corps of 260 adjudicators for 37,720 cases in 1992. Switzerland had 200 adjudicators and 300 additional staff for 17,960 cases. By comparison, the U.S. had only 82 asylum adjudicators in FY1991-92 to consider 103,447 applications. Today, the U.S. has only 150 asylum officers. Moreover, in the absence of clerks to open mail, respond to inquiries, and perform other clerical and administrative functions, we understand that these asylum officers spend much valuable time engaged in nonadjudicatory activities. It is no surprise, therefore, that the asylum backlogs are growing.

Nongovernmental organizations, including the ABA, have been meeting regularly with the INS to identify ways to increase the number of adjudications without sacrificing fair procedures. If the suggested administrative changes are implemented, the INS estimates that the current asylum corps could complete 80,000 asylum applications each year, as compared with 11,000 in FY92, and it could complete each case within 90-120 days.<sup>5/</sup>

If the number of U.S. adjudicators and support staff were then increased so that all final decisions could be made before work authorization would be issued, unfounded applications would almost certainly diminish, asylum adjudicators could begin to tackle the staggering backlogs, and bona fide refugees could

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<sup>5/</sup> During FY92, the INS asylum officer corps also screened some 36,000 Haitian asylum seekers on Guantanamo.

reunify with their families and get on with their lives. In view of the potential benefits, we have urged the INS to implement these administrative changes immediately.

The border inspections process has also captured the attention of the public and Congress, in large part because it has been depicted by some as a backdoor to terrorists and other illegal immigrants. Fraud, misrepresentation, and international saboteurs are genuine issues. However, to the extent there is a problem, the remedy should not be one that results in procedures that adversely affect legitimate refugees and eligible immigrants.

In FY1991, the INS inspected nearly 300 million aliens entering the United States. 1991 INS Statistical Yearbook at 160. Nearly 900,000 inspected aliens were barred from admission. Of these 287,326 voluntarily withdrew their request for admission and left the country at the preliminary inspection. Another 605,537 individuals withdrew their request for admission during secondary inspection. Less than 2.5% of all persons denied entry requested exclusion hearings before an immigration judge on their claims of eligibility for admission, including for asylum. Ibid. at 145. 6/

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6/ Prior to departure, the airlines are required to verify that all travelers carry a U.S. passport or a valid visa and travel documents. Upon arrival, international travelers are interviewed and their documents and belongings are inspected by INS border personnel and/or customs officials. If their documents or travel plans are suspect, the individual can withdraw his or her request for admission and leave the U.S., or be referred to "secondary inspection." If the second inspector does not believe that the alien is admissible, the traveler can either depart the U.S. or have a hearing before an immigration judge. Individuals who seek hearings, whether for asylum or other purposes, may be detained without bond.



Proposals to simply eliminate exclusion hearings and give immigration officers at airports and other ports of entry the final authority to expel any alien who attempts entry without documents or who appears to present fraudulent documents are unwarranted and misguided. Under H.R.1355 and S.667, an asylum seeker would have to prove to the satisfaction of the immigration officer at the border that he or she has "a credible fear of persecution" and escaped directly from a country of persecution or from a country where "there is a significant danger" of being returned to a country of persecution.

These claims would have to be proved by refugees arriving at the border after a stressful and fatiguing journey, and without an interpreter, knowledge of our immigration laws, or the assistance of counsel to help the applicant understand his or her burden and articulate his or her persecution claim. The summary exclusion procedures would afford the examining immigration officer complete discretion to decide an individual's fate without the involvement of any judicial or quasi-judicial officer. Arriving applicants would not even be apprised of their right to seek asylum by the inspecting officer. Moreover, an asylum seeker summarily barred from entry or applying for asylum could seek review of the officer's decision only by habeas corpus.

H.R.1153, on the other hand, would station immigration inspectors at three international airports abroad and authorize them to bar people who they suspect are ineligible to enter the United States from boarding their flights. This proposal affords even less protection from arbitrary exclusion and may require greater resources than the current system.

Both proposals are a radical departure from current procedures. Travelers with valid documents could be mistakenly barred admission. The proposals would also endanger certain refugees compelled to escape to freedom without valid immigration documents because there is not time to acquire appropriate documents or because applying for or carrying such documents would threaten their welfare.<sup>7/</sup> Indeed, persons issued parking tickets are generally afforded greater procedural protections than would be extended to returning permanent residents, international travelers, foreign students and business people, or refugees fleeing persecution under these proposals. But these proposals are alarming from another perspective as well.

Janet Gilboy, a researcher at the American Bar Foundation, has examined the work of immigration inspectors at ports of entry. Gilboy, "Deciding Who Gets In: Decisionmaking by Immigration Inspectors," 3 Law & Society Review 571 (1991). She found that inspectors made preliminary judgments of "high-risk travelers" based on nationality.

"Little or no individualized inspection occurs; presentation of the country passport suffices to judge what type of individual is requesting admission. This handling implicitly reflects inspectors' notions about the individual's limited credibility, that is, lack of trustworthiness of statements or documents." at 587-588.

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<sup>7/</sup> Each year, successful asylum applicants represented by ProBAR (a pro bono project sponsored by the American Bar Association, the State Bar of Texas and the American Immigration Lawyers Association) attempt entry to the United States with invalid documents. Although these refugees fled their respective countries with false documents, the immigration judges granting their cases considered the use of false documents consistent with their accounts of persecution and reasons for seeking asylum. Descriptions of several recent ProBAR cases are attached. Under the summary exclusion proposals, these individuals would not have a right to present their claims to immigration judges.

The reliance on such prejudgments in the inspections process should cause proponents of summary exclusion to reconsider their endorsement of this approach.

Moreover, concerns that terrorists may be able to walk out of our airports claiming asylum are addressed in current law. The INS is mandated to detain and exclude any alien who is a terrorist, and to detain serious felons and others who may endanger the public, whether or not they claim asylum. 8 U.S.C. 1225(c) and 1226(e).<sup>8/</sup> If the problem is international smuggling rings and syndicates that sell counterfeit documents, giving INS border agents final decisionmaking authority to guess which documents are real and which aren't is not the solution. Similarly, to the extent the problem is caused by inadequate detention space, the INS should examine the allocation of existing detention facilities.

At present, scarce and costly detention space is used to detain unaccompanied minor children who could be released to responsible adults and bona fide asylum seekers pending their hearings. The ABA has on repeated occasions suggested that the INS implement supervised, conditional pre-hearing release programs similar to those common in court systems across the country, rather than detain them.<sup>9/</sup> The INS could then utilize the existing detention space for persons likely to abscond or who pose

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<sup>8/</sup> The law regarding the detention of dangerous excludable aliens is so stringent that 1800 Cubans have been detained in U.S. jails for more than a decade because the U.S. has been unable to deport them to Cuba.

<sup>9/</sup> See ABA Coordinating Committee on Immigration Law, Lives on the Line: Seeking Asylum in South Texas (July 1989).

a security risk. Congress should not seek savings by cutting inspections or eliminating exclusion hearing rights.<sup>10/</sup>

Finally, we would like to put the current proposals in historical context. Between March 1980, when the Refugee Act was passed, and July 1981, 53,034 applications for asylum were filed by persons in the United States. The number of asylum claims filed with the INS in FY1992 was roughly the same (excluding claims filed pursuant to the ABC Settlement) even though the world refugee population grew by 10 million in the intervening decade.

In view of concerns that the asylum procedures were too cumbersome and that the numbers of applicants taxed the resources of the INS, legislation proposed in 1983 would have provided for an "asylum officer" to make a final asylum determination that would not be subject to further review. The ABA opposed those revisions because, where the stakes are as high as they are in asylum cases, the complexity of the asylum process does not justify eliminating the opportunity to appeal denials of asylum to an independent administrative body. As the asylum officer and immigration judge corps have increased in size, the value of an administrative appeal to ensure the uniform application of the immigration laws has surely acquired even greater importance.

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<sup>10/</sup> The GAO found that nearly one-third of the costs of airport and seaport inspections are attributable to "excessive overtime." Immigration Management GAO/GGD-91-28 at 57-59.

In conclusion, the INS adjudications and enforcement operations, as well as the immigration court system, suffer from the same problems as does the entire justice system -- long-term neglect and underfunding. The Association believes that solutions can be achieved without sacrificing fair process, and that the alternatives could be disastrous. Denial of access to justice -- whether denied outright or as a product of inadequate funding -- "encourages disillusionment with and disrespect for a system designed to protect fundamental rights and liberties. If this erosion in confidence continues, our ability to defend basic human rights will be decreased." ABA Blueprint for Improving the Civil Justice System 51 (February 1992).

Again, thank you for allowing me to express the views of the American Bar Association to the Subcommittee.



## EXAMPLES OF REFUGEES WHO ARRIVE WITHOUT VALID DOCUMENTS

## MV (Haiti)

MV is a seventeen year old who left Haiti in November 1991. He was picked up by the Coast Guard and detained at Guantanamo Bay for seven months, then he was paroled into the United States. He was detained at Camp Hope, Jackson, Mississippi and in New Orleans for three months before being transferred to the INS detention center at Port Isabel, Texas. At the time of his exclusion hearing, he had been detained for thirteen months.

M and other members of his family actively campaigned for Jean-Bertrand Aristide. M distributed pro-Aristide literature and helped register voters. M's brother knew Aristide personally, campaigned widely for him, and brought Aristide to the house on several occasions. After Aristide's election, M's brother was appointed to a prominent position.

When the military ousted President Aristide, M protested in the streets. Two days later, M's father was fatally shot by a soldier. That day was also the last time anyone in the family saw his older brother, who had also participated in the protests. The family presumes he was killed by the military.

M then stopped living at his family's house. He would move around and sleep in a different house each night. A few weeks later, his brother, F, was shot and killed by a soldier while leaving the house. The police also came to the house and arrested M's older sister. As far as M knows, no one in the family has heard from her since. During a visit to his family, M was shot through the door and wounded.

M went into hiding elsewhere. On November 22, M left Haiti on a boat with about 300 other Haitians. As the boat pulled away from shore the army shot through its sails and its hull, causing it to leak. After several days at sea, the boat was found by the U.S. Coast Guard and the Haitians were taken to the U.S. Naval Base at Guantanamo Bay, Cuba. He was granted asylum in late December 1992.

## AMA (Algeria)

AMA is a 22 year old Muslim from Algeria. The government of Algeria suspected AMA of belonging to a fundamentalist Islamic group, the Islamic Salvation Front (FIS), whose mission is to make Algeria an Islamic state.

AMA was imprisoned and tortured for more than two years for following an order from his older brother, an FIS party member, to deliver a threat letter to the police. During his years in the juvenile prison, he was taken to the police station for interrogation and tortured after each FIS terrorist incident or threat occurred.

The first time, he was beaten on the head with a stick and required stitches. Generally, AMA's wrists and ankles were handcuffed together and then chained to each other. Then they inserted a pole beneath the chain and lifted him up, hanging him between two chairs. He was then spun and beaten all over with sticks, especially on his feet. Occasionally he was blindfolded. In between torture-interrogations, AMA was kept in a dark bare cell in the police station. He tried to commit suicide several times.

Even after his release in 1989, the police made him report to them periodically. One day he was attacked by a group of men in an alley who accused him of being an "enemy of Allah" and a police informant. They stabbed him in the abdomen, kicked his face and beat him. He believes they were with the FIS.

A few months later, his brother sent a message to him to flee the country immediately. AMA bribed a boat captain to take him into Italy. He heard that he couldn't get political asylum in there so he went to Germany.

AMA lived in a refugee shelter and applied for asylum in Manneheim. In March 1992, the refugee shelter where he lived was fire-bombed by Neo-Nazi "skinheads" in the middle of the night. The shelter burned to the ground. AMA escaped the burning building by jumping out of the second-story window. As the refugees fled, the group of 60 or so Neo-Nazis attacked them. Two months later, an Algerian refugee who was a good friend of AMA's was beaten to death by Neo-Nazis, who then tied a rock to his body and threw him down a cliff into the river. AMA was also harassed by Algerian undercover agents who followed him, visited him at work and threatened to take him back to Algeria.

With his permission to be in Germany due to expire, AMA feared he would be deported to Algeria. A friend helped him purchase a false passport and ticket to Canada where he intended to apply for political asylum. When the plane to Canada stopped in Detroit, he believed he had arrived in Toronto and exited. The INS arrested him and incarcerated him in Texas for five months pending his exclusion hearing. Asylum was granted in June 1993.

## HMA (Somalia)

Mr. A is a 26 year old from Mogadishu, Somalia. He entered the U.S. with a false passport in December 1992, and was charged and convicted of knowingly attempting to enter the U.S. by means of a passport issued to some one other than himself. He was put on probation for one year, fined \$600, and transferred to the INS at Port Isabel, Texas, for his exclusion hearing. The INS Asylum Parole Service Officers (APSO's) denied release pending his hearing.

Mr. A is a member of the Darood clan. His father, a major with Siad Barre's armed forces, was killed by a bomb which had been set in his car in June 1992. Mr. A's mother was killed in October 1990 in a religious conflict in Nigeria. Mr. A taught at a school that he built in Mogadishu. He also owned a shop that sold basic goods where his wife worked.

In September 1992, Mr. A's house was bombed and burned down. He believes that both of his sisters were killed in the house along with the ten children of his stepmothers, for whom he was responsible since his father's death.

Mr. A, his wife, two children, brothers and surviving relatives left for Baidoa on the back of a truck. After reaching Baido, Mr. A decided to return to Mogadishu to try to find any surviving stepchildren. He found the situation there was even worse than when he had left. When he returned alone to Baidoa, the building where he had left his wife and children had been attacked and they were gone.

Mr. A then went to Kenya to search for his family. He never found them but he met a man who helped him get to London. In London he found a British passport and other documents on the street. A friend then got him a ticket from London to Amsterdam to Atlanta.

In mid-December 1992, Mr. A arrived in Atlanta. He admitted to the INS that it was not his passport. The next day he was taken to federal court. On January 4, 1993 he was convicted, put on probation, and fined \$600. He was then detained by the INS in Texas until an immigration judge granted asylum in mid-April 1993.

Mr. A still suffers tremendously from post traumatic stress disorder. He has great difficulty sleeping, continuously hears voices in his head, and has bouts of crying and shouting. He has had difficulty standing and walking. He tends to ramble and often gets confused. He feels great guilt and remorse regarding his family and is upset that his luggage containing his only family heirlooms -- a gold wedding set and Koran -- was lost by the INS.

## DGG (Columbia)

Mr. G is a 38 year old from Medellin, Colombia, who resisted the pressure of the Medellin cartel to use his family home shoe factory to ship cocaine.


The family's refusal to assist the cartel caused two of his cousins to be shot in 1984. In November 1985, Mr. G was attacked on the street by three men with knives. He was stabbed in several places on his body and left for dead. He was hospitalized for several days. Owing to his cousins' deaths and the attempt on his own life, the family closed the shoe factory.

In January 1986, a warning was sent to Mr. G stating, "You had luck with the first attack. The next time we will find and kill you." Signed "El Cartel." Mr. G went to Bogota for safety. There he spoke with his mother who told him not to return to Medellin since the cartel had made several phone calls asking for him.

Mr. G fled to Belize by boat. He made his way from there to Guatemala City and then to Mexico. In the interim, the cartel killed three more cousins and his nephew.

On Christmas Day, Mr. G called his mother. His sister told him that the cartel had assassinated their brother only days before. The cartel had killed 7 members of his family -- everyone who had worked in the shoe factory except himself and his elderly father, although it had attempted to take his life too.

Tired of living in fear that the Mexican authorities would deport him back to Colombia, Mr. G decided to go to the U.S. to ask for asylum. Mr. G crossed the bridge at Brownsville and presented himself to INS to ask for asylum. U.S. INS officers did not believe he was Colombian but Mexican and walked him back across the bridge to the Mexican immigration officers. The Mexican officers took him back across to the U.S. officers. Mr. G was then arrested by U.S. immigration and detained until an immigration judge awarded him political asylum.

  
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RS (India)

RS is a 31 year old from Punjab province, India. He was a member of a student group which opposed human rights abuses. His advocacy angered both the government and Punjabi separatist forces.

RS was kidnapped by the separatists for two weeks and, when released, threatened with death unless he joined the group. Shortly after his release, police arrested RS and accused him of being part of the separatist movement. He believes that he was arrested because of his advocacy of human rights.

He was tortured by the police and released only after a bribe was paid. About three weeks later, he was arrested again, but paid one officer a bribe and escaped. At this point he decided to flee the country.

RS used false documents to escape because he feared he would not be allowed to leave the country and would be arrested. The INS detained him without bond for almost seven months before he was awarded asylum.



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